MR. N. NILAKANDA PILLAI: (*a*) (1) The Ayurvedic Pharmacy was opened on the 1st Mithunam, 1093, and the Ayurveda Hospital and Dispensary on the 18th Karkadakam, 1093.

(2) and (3) The accounts of the Ayurvedic Dispensary were audited once (between the 14th Vrischikam and the 29th Dhanu, 1098).

(*b*) The auditor's report is now under the examination of Government. The question whether it could be laid on the table must wait until that examination is over.

MR. K. PARAMESVARAN PILLAI: Will the member for the Government be pleased to say why the Ayurvedic Dispensary and Pharmacy were not audited between the years 1093 and 1097?

MR. N. NILAKANDA PILLAI: Government will enquire and let the member know why no auditing took place between 1093 and 1097.

Female Vaccinators.

251. MR. T. KUMARA PILLAI: (*a*) Will the Government be pleased to state whether they intend to train and appoint female vaccinators as far as possible for the vaccination of women in the State?

(*b*) Has the present Sanitary Commissioner, Mr. Krishnamurti Aiyar, recently dispensed with the services of female vaccinators? If so, how many and on what grounds?

(*c*) Will the Government be pleased to lay on the table a statement showing the length of service and caste of those whose services have been thus dispensed with?

MR. N. NILAKANDA PILLAI: (*a*) Several women have already been trained as vaccinators. It is neither necessary nor practicable to employ female vaccinators to vaccinate women in all cases.

(*b*) Four female vaccinators have been entertained in the department and all of them are in service.

(*c*) In view of the answer to (*b*), this question does not arise.

THE TRAVANCORE EZHAVA BILL.

Clause 27.

DEPUTY PRESIDENT: We will continue the discussion on the amendment to clause 27 of the Ezhava Bill.

MR. M. GOVINDAN: Sir, I oppose the amendment. It is true that the junior member of a *tarwad* has got an interest in the *tarwad* property. I do not controvert that proposition. But the confusion that will be caused by allowing the junior members of a *tarwad* to sue for redemption of mortgages must be apparent to all *marumakkathayam* lawyers. It will unnecessarily interfere with the management of the *tarwad* by the *karanavan* whose position is even now not very enviable. When he makes preparation for suing to get redemption of a property outstanding on mortgage, a junior member may anticipate him and go

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and institute a suit straightway, before the *karanavan* might find time to go to the court. Then again there may be two suits. A number of junior members may rush to the court with separate suits. There are methods for dispensing with some of them. But even then it would be an unnecessary interference with the rights of a *karanavan* to manage, according to his own discretion, the *tarwad* properties. The present law makes ample provision for safeguarding the interests of the *tarwad* in the case of properties outstanding on mortgage where the *karanavan* colludes with the mortgagee and declines to take the necessary steps to get possession of the properties outstanding on mortgage That is to say, *marumakkathayam* law even now allows a junior member to sue for redemption with the *karanavan* as defendant when it is the case of the *karanavan* colluding with the mortgagee. I therefore think that it is unnecessary to introduce this provision for the safety of the *tarwad* and that it will only unnecessarily complicate its management.

MR. V. SUBBA AIYAR: Sir, with reference to this amendment, I wish to place certain facts before the House, as I consider that the amendment, if accepted, will lead to considerable difficulties. I can understand that, if a junior member of a *tarwad* has a *definite* share in the property, then he may redeem the property as in the case of undivided coparceners governed by the *Mitakshara* law. But in such cases, the rights of other persons similarly interested cannot be prejudiced. If other persons similarly interested claim the same, there may have to be partition and each will be entitled to redeem his share. Thus he redeems the property as the *co-owner* of a *definite* share of an estate. The Transfer of Property Act provides that any person who has got an interest in a mortgaged property may redeem the mortgage. That interest is presumed to exist in the case of a person who is entitled to a definite share; and he is therefore allowed to redeem it. In the case of *marumakkathayam tarwads*, it will be very difficult to introduce this law. Under the existing law, a junior member is allowed to redeem a mortgage under certain circumstances. If a mortgage is about to be barred or if it is prejudicial to the *tarwad* to continue it, a junior member may redeem the property. If he is allowed to redeem the property even in the absence of special circumstances, it may lead to complications As was pointed out by Mr. Govindan, supposing a junior member redeems the property, is it open to another junior member to redeem it? Supposing two persons file suits for the redemption of the property simultaneously, what is to be done in such cases? If a co-owner wants to redeem his share of the property, another owner may come and say "Give me the remaining share and I shall redeem it." But if a junior member who does not represent the *tarwad* is allowed to redeem the property, he may be in possession of the *tarwad* property to the exclusion of other members of the *tarwad*. I do not accept the provision in the Nair Regulation Amendment Bill, that until division each member of a *tarwad* has got a definite share in the *tarwad* property which is capable of being alienated or seized. The provision will lead

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to complications. The existing *marumakkathayam* law does allow the redemption of mortgages under certain circumstances. I think we may leave the provision there, until we are in a position to say what share each member has.

MR. K. PARAMESVARAN PILLAI: I do not deny that difficulties exist. But what is the objection to allowing the right to be exercised by one junior member, and then say that the right to redeem the property vests only in the *karanavan*?

MR. V. SUBBA AIYAR: Supposing two members file suits, one to-day and the other to-morrow. Why should the junior member A, who files the suit on the first day, be preferred to the other junior member B? Why should A be in a position to redeem it and not B?

MR. P. K. NARAYANA PILLAI: I would request you, Sir, to allow a peon to be somewhere here to carry chits.

MR. S. PARAMESVARA AIYAR: I will arrange, Sir.

MR. V. SUBBA AIYAR: The existing law provides for redemption in certain cases. I, therefore, think that the amendment is not necessary.

MR. K. PARAMESVARAN PILLAI: I must confess that, when I read the amendment for the first time, it appeared to me that it would be rather difficult to give effect to that provision, because it might lead to several complications. I am even now not satisfied that it is *altogether* free from them. But still, I think the House ought to take into consideration the question whether, with certain restrictions and limitations, it is not possible to confer the right on the junior members. That several of them might sue successively is, I think, a contingency which need not be taken seriously into account at all because the millenium is far off when the junior members of a *tarwad* will be so far possessed of wealth, as to successively file suits for redemption of property. If such a contingency arises, I should be the first to welcome that.

DEPUTY PRESIDENT: It is not an impossible contingency. But when the contingency does arise, what should the courts do?

MR. K. PARAMESVARAN PILLAI: We are not legislating for contingencies.

DEPUTY PRESIDENT: But the legislature should give some guidance to the courts.

MR. V. SUBBA AIYAR: May I inform the member that some time ago there were two such suits?

MR. K. PARAMESVARAN PILLAI: I think the contingency is more imaginary than real and I am afraid that it is only in some exceptional cases that such a contingency might actually arise. But what I ask is whether it is not possible to give the junior member the right to redeem the *tarwad* property with the restriction that, once a junior member has exercised the right to redeem, the *karanavan*, as the representative of the *tarwad*, alone can redeem it from him. There are several cases in which junior members desire to redeem properties, but are not

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[Mr. P. K. Narayana Pillai.]

able to do so on account of the present law. So that, it is a matter for consideration by this House whether, with some restrictions and safeguards, it would not be possible to accept this amendment.

DEPUTY PRESIDENT: The amendment is silent on this point. You realise the difficulty and suggest a solution, but that does not form a part of the amendment under discussion.

MR. K. PARAMESVARAN PILLAI: I will bring it forward as an amendment.

MR. K. P. RAMAN PILLAI: I will accept it.

DEPUTY PRESIDENT: But, Mr. Raman Pillai, no such amendment has been formally moved.

MR. K. PARAMESVARAN PILLAI: I move that the following proviso be added:

"Provided that no other member excepting the *karanavan* can redeem the property from the junior member who has already redeemed it".

MR. C. P. KOCHUKUNJU PILLAI: I second the amendment.

MR. K. P. RAMAN PILLAI: I accept the amendment.

MR. V. SUBBA AIYAR: I am not satisfied with this amendment. Evidently, it provides only for cases where the mortgagee himself is prepared to surrender the property to the mortgagor. Suppose the mortgagee is not willing to surrender the property. In such a case, is the junior member entitled to sue? He is not. Supposing another member also offers to redeem the property, what will the court do? There is no provision under which the court may act. We have to provide for such a contingency also. I doubt whether we should go in for that provision, especially when the *tarwad* is not going to continue in the form in which it does now. I do not think that this amendment is free from difficulties either.

MR. P. K. NARAYANA PILLAI: I rise to support the amendments proposed by Messrs. Paramesvaran Pillai and Raman Pillai.

DEPUTY PRESIDENT: There is only one amendment before the House.

MR. P. K. NARAYANA PILLAI: Then I support that. The law, as laid down by the High Court in their latest pronouncement upon the subject, is to the effect that the junior members of a *marumakkathayam tarwad* are at liberty to redeem the properties outstanding on mortgage, provided the interests of the *tarwad* as a whole require that step. That is the latest pronouncement. Originally, the High Court used to set its face as much as possible against such a venture. But, later on, the tendency has been to allow the junior member, as far as possible, to redeem the *tarwad* properties. The whole thing is being made to hang on that undefined condition, *viz.*, "the interests of the *tarwad*", which certainly will have to be determined on the merits of each case.

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DEPUTY PRESIDENT: Then why not be satisfied with the common law as laid down by the High Court on the subject, especially as the tendency is to encourage the junior members.

MR. P. K. NARAYANA PILLAI: My friend, Mr. Subba Aiyar, referred us to the provision in the Transfer of Property Act. It is on the Transfer of Property Act that I base my observations. Among the provisions of the Act, now practically adopted by the High Court of Travancore, is the provision that any person having any interest in properties mortgaged has got a *locus standi* in suits for the redemption of such properties—if I am not forgetting the provision.

DEPUTY PRESIDENT: That he has; but is he allowed to redeem the properties?

MR. P. K. NARAYANA PILLAI: Yes. Occasions may arise when the junior member should be given the privilege to redeem the properties. Suppose again that the mortgagee is continued in possession after a decree for redemption which the *karanavan* refuses to execute.

DEPUTY PRESIDENT: He should allow a receiver to be appointed. He cannot move as an attaching creditor.

MR. P. K. NARAYANA PILLAI: Only as an attaching creditor. With respect to the position of the attaching creditor himself, unfortunately the law in Travancore is in a conflicting condition. The late Chief Justice Mr. Raman Menon said that the attaching creditor has got an interest in the property attached. But another Bench came to the opposite conclusion, to which the present Chief Justice was a party. So that, with respect to that question, we are not on firm ground. Whatever that be, seeing that an attaching creditor is a necessary party to a redemption suit, and in view of the fact that the junior members and the *karanavan* have co-ordinate rights in the equity of redemption, why should the authority of the *karanavan* be made to press like an incubus on the rights of the junior members when they are in possession of funds to redeem the property? The junior members have a specific position in the *tarwad*. As such, if we had only the law relating to mortgages to reckon with, there would be no justification to shut out the junior members. No doubt, the *marumakkathayam* law coddled and fondled by the courts is a peculiar law. Judges must have been obsessed by the possible difficulties if the ordinary law of property were allowed its full swing. That seems to have been the main obstacle in the way of encouraging junior members to redeem mortgages. The law as codified enabling even an attaching creditor to redeem could not be made to give way before the pretensions of the *marumakkathayam* law. Mr. Subba Aiyar pointed out what exactly is meant by an interest in property and seemed to suggest that such interest should be capable of division for purpose of redemption. I beg to say that that certainly is not in the statute.

MR. V. SUBBA AIYAR: May I inform my friend that the section on partial redemption says that a person is entitled to redeem a mortgage only to the extent of his share in the property?

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[Mr. P. K. Narayana Pillai]

MR. P. K. NARAYANA PILLAI: Evidently my friend refers to section 60 of the Transfer of Property Act. No doubt, it enables partial partition. That section may be read with section 91 of the Act. This latter section enables any one having an interest in the mortgaged property to redeem. In the case of tenants-in-common, joint tenants, or Hindu coparceners, there is a definite share, or a share capable of being made definite by partition, for each of the joint-mortgagors. Even in the case of a Hindu coparcenary, one coparcener without a previous division was held entitled to redeem the entire mortgage. (*Vide* 15 Bombay, 24.) In the *marumakkathayam* system, the law does not allow partition. All the same, each member *has* an interest in the properties. Why not therefore allow junior members to redeem mortgages, splitting up being out of the question? That is how the House should view the question. If any junior member is not at liberty to redeem the property, the position will be hardly reasonable or logical. What is the right of the *karanavan* over and above the right of the junior member? It is equal to that of the junior member except that the *karanavan* is entitled to retain possession of *tarwad* properties. Let it be so *inter se*, as between the members themselves. That should not lead us to any confusion when the encounter is between a junior member and a stranger like the mortgagee. In such a case, the junior member should be deemed to be in the better position. In other words, as against a stranger, the junior member is entitled to possession. Owing to the intricacies of the *marumakkathayam* law, certain difficulties have been pointed out. Many of these difficulties are not likely to arise. For, in a suit for redemption, all persons who have an interest in the property, *i. e.*, either in the mortgage or in the equity of redemption, are necessary parties. Therefore, all *tarwad* members will be parties to the redemption of mortgages, and they can thresh out the points of dispute in the suit itself. In the nature of the amendment moved by Mr. K. Paramesvaran Pillai, I think it should be granted that the weight of the *karanavan's* view, or for that matter the views of other junior members, expressed in favour of the mortgagee's disinclination to be redeemed, should be of no avail against a junior member suing to redeem. Property obtained by a junior member in a redemption suit need only be recovered by the *karanavan* on settlement of accounts. No doubt, it will be advisable to regard the equity of redemption as partible, in which case the difficulties pointed out will disappear. The amendment has been so shaped as to meet various difficulties; and I think there is no serious difficulty in accepting it. Sir, let me just point out the sort of novelty that we come across in the practice of law in courts. I have had the case of a *karanavan* who, after obtaining a decree for redemption, was prevailed upon by the mortgagee not to execute the decree. A junior member cannot then bring another suit for redemption because the rule of *res judicata* will stare him in the face. It was with considerable difficulty that I persuaded the Kottayam District Judge to allow the junior member to execute the decree obtained by the

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karanavan. All these difficulties would arise as the *karanavan* is a pet of the court. Why not empower the junior member to safeguard at least his own interests, if not the interests of other persons? Under these circumstances, in view of the various difficulties in the matter of redemption and even after a decree for redemption, I would very strongly urge the House to accept the amendment now before us.

MR. T. K. VELU PILLAI: I am inclined to oppose the amendment. I am sorry I have to differ from Mr. Paramesvaran Pillai and Mr. Narayana Pillai; but it is my conviction that, if you allow the amendment to pass, the difficulties of *tarwad* management will be very much more than what they are now. If the interest of a junior member is ascertained and has been made ascertainable, I can very well understand the force of the argument in favour of the amendment.

DEPUTY PRESIDENT: Then these difficulties would not arise at all.

MR. T. K. VELU PILLAI: No. But here, if there are twenty junior members in a *tarwad*, and if one of them is allowed to take possession of the properties alienated by the *karanavan*, it would set a premium on disputes between the junior members themselves. We do come across cases where the *karanavan* takes a fascination for a particular *anandaravan*. He may be his son-in-law. If the *karanavan* advances money to that *anandaravan* to enable him to file a suit under the provisions of the present amendment, that will have the effect of preventing other junior members from coming forward to establish their rights. The effect of this would be to create more unrest. Human nature is very curious at times. Ordinarily, the majority of the members of a *tarwad* would like the property to be redeemed by a junior member and enjoyed by him in preference to a stranger. But under the present conditions of *marumakkathayam tarwads*, the junior member in any position of vantage will be disliked and hated. That will be adding one more discord to the *tarwad*. If the junior members are allowed to redeem the properties as they like, *tarwad* management will become still more difficult. No one will be willing to advance money on mortgages, if at any moment any junior member can go to the court and ask for redemption.

Mr. Narayana Pillai referred to the latest decisions and conceded that the present law allows such redemption if it is for the benefit of the whole *tarwad*. Now when this is the law, we shall not be justified in enabling individual junior members to have a separate individual right. The point was actually decided in the 18 T. L. R., 31 case. A Full Bench decided that such redemption should not be allowed——

DEPUTY PRESIDENT: Ordinarily.

MR. T. K. VELU PILLAI: Ordinarily. I think that decision need not be varied, because, when a court finds that, for the protection of a *tarwad* in a particular case, such redemption should be allowed, the court has the power to do so. This point was considered in great detail by the *Marumakkathayam* Committee. I do not wish to dwell

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[Mr. N. Kumaran.]

on that point, except to refer to what that committee said. After elaborate deliberation, the committee came to the conclusion that junior members should be allowed a right to redeem the mortgaged property. But all the same, the *Marumakkathayam* Committee's opinion is not binding upon the House, and we can view the question in the light of other reasons. My objection is that the privilege now sought after will not confer any advantage on anybody. It will create disputes in the *tarwad*, and it will make *tarwad* management more difficult. Already, we are restraining the powers of the *karanavan*; we are also carving out new rights for the junior members. My submission is that more than what has been already provided for in the bill is not required. Unless we change the nature of *marumakkathayam* property and make it possible for individual members to get ascertained rights, this provision will be of very little use. When the Full Bench decision in 18 T. L. R., which was arrived at by the judges after considering the different aspects, is still in force, we need not engraft any change in the law unless it is to the certain advantage of the *tarwad*. I think this provision will be more to the detriment of the *tarwad* than to its advantage. I therefore oppose the amendment.

MR. N. KUMARAN: I do not see my way to support the amendment. If the law stood as it was laid down in 18 T. L. R., I would certainly have supported the amendment. But the difficulty that has been experienced in the redemption of mortgages by the junior members of the *marumakkathayam tarwad*, has been more or less removed by the later rulings of the High Court. These later rulings enable the junior members to bring suits for the redemption of properties outstanding on mortgage on certain specific grounds. My view is that, if there is any particular case in which the junior members can prove to the satisfaction of the court that it is to the interest of the *tarwad* that they should be permitted to redeem properties outstanding on mortgages, there is no reason why the court should not allow the suit.

MR. K. PARAMESVARAN PILLAI: Why not?

MR. N. KUMARAN: For the High Court rulings are to that effect. It would be in the interests of the *tarwad*, as well as in the interests of the junior members, to have the suits allowed. Whatever that might be, as long as the rulings of the High Court have permitted redemption by the junior members under certain conditions, my view is that there is no necessity for introducing any change in the common law. In the case of Ezhava *tarwads*, the provisions that we are going to enact in the subsequent clauses of this bill would render the number of cases enabling junior members to take advantage of this amendment very few indeed. That is to say, we are going to allow at least *thavazhee* partition under certain conditions. On a reference to these clauses and the amendments connected therewith, it would be found that hereafter there would be very few families in which the

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karanavan of the old pattern would be called upon to manage the whole *tarwad*. In cases in which *thavazhee* partition may be enforced, there will be only few *karanavans* who will not be prepared to take their share in the property and get out of the *tarwad*. We will have ultimately only a woman and her children constituting the *thavazhee* remaining joint in estate. It is not likely that, when things are in such a condition, the younger brother would be prepared to redeem the property which the senior or the eldest brother might have mortagaged to strangers. Under such circumstances, the *karanavan*—the senior male member of the *thavazhee*—would be himself prepared to redeem it, if it is to the benefit of the *tarwad*. We cannot presume that the elder brother would be working against the interests of his own sisters and nephews. I submit, therefore, that when the common law provides sufficient safeguards—

MR. K. P. RAMAN PILLAI: May I know whether Mr. Kumaran's position is that, if a mortage is made for *tarwad* necessity, a junior member should be precluded from redemption?

MR. N. KUMARAN: Generally he should be precluded until a reasonable time elapses from the date or term of the mortgage. I quite sympathise with Mr. Raman Pillai and the other members who spoke on the subject pointing out the desirability of junior members redeeming *tarwad* property. There are several instances in which the recalcitrant *karnavanan* would not be willing to redeem the property even when it is mortgaged for nominal sums. The mortgage amount would be very small and the income from the land would be very large, so that the *tarwad* will be losing a great deal because the property is not redeemed. But under the present law it would not be possible for the *karanavan* to allow the property to remain in the hands of strangers for ever so long without the certain risk of a successful suit for redemption at the instance of any of his *anandaravars*. I therefore think that this amendment is not necessary.

MR. V. SUBBA AIYAR: Sir, I have heard the arguments of Mr. Narayana Pillai and, in particular, those of Mr. K. Parameswaran Pillai. While they want to remove some inconvenience, which the junior member is ordinarily put to, my friends desire to introduce a provision which, I think, is likely to complicate matters. It was conceded by Mr. Parameswaran Pillai that the amendment, as it stood, is likely to lead to complications. It is in order to avoid them that the present amendment has been put in. I think that, if we examine the amendment a little more closely, it will be found that there are further difficulties. In trying to remove one difficulty, we should not bring in others. The Nair Regulation Amendment Bill has been referred to the Select Committee. We can thresh out the various aspects of that bill, and, if, after it has been passed into law, we find that it is a wholesome provision, an amendment to the Ezhava Regulation could very well be made then. I think it is better to leave the matter as it is and have it discussed fully in connection with the Nair Regulation Amendment Bill.

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[Mr. J. John Nidiry.]

MR. K. P. RAMAN PILLAI: I am willing to withdraw the amendment if Mr. Subba Aiyar will undertake to bring it forward afterwards.

MR. V. SUBBA AIYAR: Any one can do it.

The amendment of Mr. K. P. Raman Pillai was, by leave of the House, withdrawn.

The question that clause 27 stand part of the bill was then put to the vote and carried.

Clause 27 was added to the bill.

Clause 28

MR. A. GOVINDA MENON: Sir, may I move my amendment?

DEPUTY PRESIDENT: I find there are two amendments to the clause, one Mr. Govinda Menon's and another Mr. Nidiry's. They are not exactly amendments; they are a negation of clause 28. I cannot therefore permit either of you to move your amendments now. But I will permit you to move one of the amendments, if, when I put the whole clause to the vote of the House, the motion is vetoed.

The question is that clause 28 stand part of the bill.

MR. A. GOVINDA MENON: I beg to oppose the motion. I come from a part of the State where almost the entire section of the Ezhava community is composed of people who are in the eye of the law *marumakkathayees*. Even according to the Ezhava Law Committee's report, more than 60 per cent. of the witnesses demanded individual partition. It is now something like five years since that report was received. The *interim* period, I need not say, has made much havoc on the ideals of every community which has been professing the *marumakkathayam* law of inheritance. Those who formerly were for *thavazhee* partition have now changed their opinion. From my own knowledge of the Ezhava community in this State, I think the majority of them are for individual partition. There will always be a set of die-hards who would say that no legislative measure should be enacted affecting the social position of any community unless every member of the community desires it. There are such persons not only in India, but also in the rest of the wide world. But I think that an intelligent legislature ought to provide not merely for the recording of existing practices, but that it should go a step further and mould the opinion of the people to a better ideal. In this view of the matter, I oppose the passing of the clause.

MR. J. JOHN NIDIRY: I beg to associate myself with the views of my friend, Mr. Govinda Menon, in opposing the passing of the clause as it is. I was one of those who sat on the Ezhava Bill and recorded a dissenting note. This was one of the points on which I differed. I have advocated individual partition, and have given my reasons for adopting that instead of *thavazhee* partition. Those reasons are

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before the Council and I do not wish to restate them. All that I wish to say is that from the recent discussion we have had in regard to the Nair Regulation Amendment Bill, the impression—

DEPUTY PRESIDENT: We are now proceeding with the discussion of the Ezhava Bill.

MR. J. JOHN NIDIRY: I am only comparing the two. The impression that I gathered from the House was in favour of individual partition. If individual partition is favourable to the Nair community, in my humble opinion it is all the more necessary that individual partition should be given to the Ezhavas as well. For, according to the Ezhava Law Committee, the Ezhavas were originally *makkathayees*. It was through their contact with the *marumakkathayees* that at least some portion of the Ezhava community adopted the *marumakkathayam* system. It is admitted that a large portion of the community still follow the *makkathayam* system of inheritance. It is only in some parts of the country that the community adheres to pure *marumakkathayam*. There is a middle system styled the *misradayam*. It is the opinion of the Ezhava Law Committee that, of the three sects, those who follow *makkathayam* and individual partition are the most prosperous. If that be the case, I think we would be doing an injustice, if we did not enact a system which would go to add to their prosperity. So, my submission is that we have got a very good opportunity to pave the way towards progress and prosperity, and it is, therefore, our bounden duty to provide for individual partition. With these few remarks, I agree with Mr. Govinda Menon in opposing the reading of the clause as it is.

MR. M. GOVINDAN: It is my painful duty to oppose the amendment of Mr. Govinda Menon.

DEPUTY PRESIDENT: There is no amendment before the House.

MR. M. GOVINDAN: I mean his proposition to delete the clause.

In the first place, there is this difficulty. Suppose the clause relating to *thavazhee* partition is deleted from the bill and individual partition does not come in. That is a contingency that has to be taken into account. I should, therefore, think that it is rather dangerous for me to support Mr. Menon's suggestion for deleting the clause altogether.

There is not much ground for Mr. Menon's proposition. My reason for opposing it is this. I will take it for granted that another clause will be introduced in its place providing for individual partition. The question then is whether it would be acceptable to the community concerned, and whether it would be expedient for this Council to enact a measure of the kind for the community, when a committee consisting of a majority of members belonging to that community has unanimously reported that there need be only *thavazhee* partition.

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[Mr. V. Subba Aiyar.]

MR. K. PARAMESVARAN PILLAI: I want to ask a question, *viz.*, whether, at the time the witnesses were examined, *thavazhee* partition was explained to them. For, it does not appear to me that the recommendation now made is exactly *thavazhee* partition.

MR. M. GOVINDAN: Evidently, Mr. Paramesvaran Pillai refers to a later clause. We are now at clause 28. This clause concerns itself only with *thavazhee* partition. When we come to the clause to which Mr. Paramesvaran Pillai refers, I shall answer him. Suppose it is said that there cannot be any partition except *thavazhee* partition, "except as hereinafter provided"; but, we have not gone into those exceptions. Although there was a majority of witnesses, as suggested by Mr. Menon "more than sixty per cent.," supporting individual partition, it was considered that it was such a foot and branch reform that the Ezhava Law Committee would rather err on the side of moderation than of forcing the pace. So in a spirit of conciliation and compromise the provision was adopted by the committee. Such being the view that influenced the majority of the members of the community who brought forward this suggestion, I hope that Mr. Govinda Menon himself may not be very particular about pressing his proposition.

MR. A. HOOGEWERF: Sir, I am in full sympathy with Mr. Govinda Menon with regard to his objection to the reading of clause 28. But—it is a very big "but"—the Select committee has struck on a *via media*. And from what I learned from Mr. Govindan just now, I find that the *intelligentsia* of the community is not quite for this forcing of the pace. I think, therefore, that it is safe to limit ourselves to *thavazhee* partition just now and not jump on to individual partition immediately. I therefore oppose Mr. Menon and support the reading of the clause.

MR. PAUL V. DANIEL: Several representatives of the different sections of the Ezhava community, fortunately or unfortunately, approached me. From what I was able to learn from the representations made to me, I do not think there is any necessity for introducing the change suggested by Mr. Govinda Menon. I do not think that the Ezhava community will be satisfied with a provision for individual partition.

DEPUTY PRESIDENT: You mean that the representatives of the Ezhava community were satisfied with the provision made by the Select Committee?

MR. PAUL V. DANIEL: Yes, Sir. So I oppose Mr. Govinda Menon's proposition.

MR. V. SUBBA AIYAR: I wish to speak a word on the opposition of Mr. Govinda Menon. We have, in the first place, to consider the fact that we are here legislating for the Ezhava community. The Ezhava Law Committee framed a bill recommending *thavazhee* partition; the Select Committee upheld it; and among all the representations

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we have hitherto received there is not one in which individual partition is urged. Individual partition may be good from the point of view of a particular member. But what we are concerned with is what the majority of the community want or consider to be proper or good. Certain stages of the bill have been gone through, and we have not yet heard from any single member that individual partition is wanted. On the other hand, in regard to some of the modifications that have been made, there are some among the community, who say; "Others are going too far; we are not prepared to go to that extent". When we are greatly worried by representations made to this House and outside that some of the provisions are too far-reaching and wide in their import, I do not know if we will be justified in travelling beyond the scope of our business and providing for individual partition.

MR. J. JOHN NIDIRY: What about the sixty per cent. of the witnesses mentioned in the Law Committee's report?

MR. V. SUBBA AIYAR: It may be that individual witnesses might have said something or other. When the Select Committee's report on the bill was published, nobody said anything against it. Then, why should we bother ourselves about a provision which may be good or bad in itself? This is a matter in which there is absolutely no representation whatsoever from the community. If there had been, we could have gone into the merits of the question. But here there is no such thing at all. I therefore think that the clause may be left as it is.

MR. P. K. NARAYANA PILLAI: I am sorry that the learned Law Member is not viewing the question in a logical spirit. Let me say how the matter stands. Here, in this bill, *thavazhee* partition and individual partition are included. The amendment suggested by Mr. Govinda Menon, which is being assailed, does not curtail the sphere of freedom conceded in the bill, but only seeks to widen the same. It is not compulsory individual partition that is aimed at by Mr. Govinda Menon. The amendment enables any member to get away from the *thavazhee* or the *tarwad* as the case may be. If the majority of the members of a *tarwad* are for individual partition, they can have it.

DEPUTY PRESIDENT: If the majority wants to continue under the *tarwad* system, they cannot do so if you get rid of this clause and put in the clause of Mr. Govinda Menon. On the other hand, if the majority of the members are satisfied with the existing clause, it is still open to any one member to ask for individual partition.

MR. P. K. NARAYANA PILLAI: I think otherwise. Mr. Govinda Menon's amendment does not compel individuals to quit the *tarwad*, bag and baggage, on the passing of this measure. They may continue joint in spite of Mr. Menon's amendment. There is a clear and forcible demand for individual partition. Why should the legislature stand in the way? Mr. Subba Aiyar says that nobody wants it. Then let it remain a dead letter, if it is nobody's interest to have this amendment; it does no harm. If, in course of time, anybody finds it useful, let him take advantage of it. Why should this ponderous

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[Mr. P. Paramesvaran]

legislative machinery be moved again to widen the scope of the clause? The provision does not incommode anybody. It is only an enabling provision. As for evidence, there are sixty per cent. for individual partition.

As to Mr. Govindan's argument that it is to be viewed in a spirit of compromise and conciliation, I would point out that the principle of compromise has no bearing on the subject in hand. If a dozen people are tied together, and if a few of them wish to come out of it while the rest wish to enjoy the bondage, a proposal to set free one foot of those who wish to get away is no compromise at all. The question is whether we are going to huddle a number of persons together and have them as a joint entity, that is, the *tarwad*, or whether we are going to recognise the individuality of every member constituting the *tarwad*. That is the question. The advance of civilisation, and the advance of democracy are all to the effect that each individual must have free scope for the play of his powers in whatever position he may find himself. The fact that he finds himself a member of a *tarwad* is no reason why he must be a man with clipped wings. If, after division, the members of a *tarwad* are so minded, they are at liberty to reunite. The common *marumakkathayam* law allows it. There is absolutely no harm in providing for individual partition. I therefore support Mr. Govinda Menon.

DEPUTY PRESIDENT: The question is that clause 28 stand part of the bill.

The motion was carried, 19 voting *for* and 4 *against*.

Clause 28 was added to the bill.

Clause 29.

DEPUTY PRESIDENT: There are three amendments to clause 29. Two of them are for the deletion of the whole clause and the substitution of a new one. I rule them out of order. Future amendments also of the kind I cannot allow. Then there is a third amendment standing against the name of Mr. P. Paramesvaran, which runs as follows:

Add at the end of clause 29: "or of a common *karanavan* or of a female member confirmed to have no prospect of issue."

Mr. Paramesvaran may move it.

MR. P. PARMESVARAN: വസ്തുവിഭാഗം എപ്പോൾ ജനിക്കുന്നു എന്ന് ഇതിൽ പറഞ്ഞിരിക്കുന്നു. ഇതിൽ "പൂവീക ജീവിച്ചിരുന്ന കാലത്തു" എന്ന വാക്യത്തെ സ്ഥാനം മാറി "പൂവീകയെ അവളുടെ കാലത്തു പൊതുക്കാരണവനോ നിസ്സന്തതിയാണെന്നു തീർപ്പുപ്പെട്ട ഒരു ശാഖയെ ജീവിച്ചിരിക്കുന്ന കാലത്തു" എന്നു ചേർക്കണം. ഏ എന്ന പൂവിക് ജീവിച്ചിരിക്കുന്ന, അവളുടെ ജീവിതകാലത്ത് അവളുടെ സോദരനായ ബി കാരണവനായി വാഴുന്നു. ഏയ്ക്കു പുത്രന്മാരും പെൺകുട്ടികൾ

ളും അവരുടെ കുഞ്ഞുങ്ങളുമായി ഫ o സന്താനങ്ങളും ഉണ്ട്. ഏ മരിക്കുന്നതുവരെ കാരണവനായും ഏ യോളം വസ്തുവിനു തുല്യാവകാശിയായും ഇരുന്ന ബി യാകട്ടെ ഏ മരിച്ച ക്ഷണത്തിൽ അ വസ്തുവിന്റെ പതിനൊന്നിൽ ഒരംശം ഓഹരിക്കുമാത്രം അവകാശമുള്ളവനായിത്തീരുന്നു. ഈ വിധം തനിക്കു സ്ഥാനഭ്രംശവും അവകാശഭ്രംശവും ധനനഷ്ടവും പെട്ടുന്നവരും എന്നു വിചാരമുള്ള ഒരുത്തൻ തന്റെ കാരണവസ്ഥാനത്തെ ന്യായമായി വഹിക്കയൊ പരിപാലിക്കയൊ ചെയ്യാൻ ഇഷ്ടപ്പെടുകയില്ല. ഒരു ശാഖ നിസ്സന്തതിയാണെന്നു തീർച്ചപ്പെട്ടിരുന്നാലും ഇപ്പോഴത്തെ വകുപ്പിൻപ്രകാരം ആ ശാഖയിൽ ജീവിച്ചിരിക്കുന്ന ഒരു അംഗത്തിനു വസ്തു ഭാഗിച്ചുകിട്ടണമെന്ന് അവകാശപ്പെടാം. ആ ഒറ്റ അംഗം സ്ത്രീയായിരുന്നാൽ അപ്രകാരം അവർക്കു ഭാഗത്തിൽകിട്ടിയ തറവാട്ടു സ്വത്തിന്റെ ഓഹരി അവർ മരിക്കുമ്പോൾ അവളുടെ ഭർത്താവിനു ചേർന്നുകൊള്ളുന്നു. ഒരു തറവാട്ടിലെ സ്വത്തിന് ന്യായമായ അവകാശികൾ ജീവിച്ചിരിക്കവെ അന്യതറവാട്ടിലുള്ള ഒരു പുരുഷന് ആ തറവാട്ടിലെ സ്വത്തിന്റെ അവകാശം കൊടുക്കുന്നതായ ഫലം ജനിക്കുന്നുണ്ട്. അതു ന്യായമല്ല. അതുകൊണ്ടു നിസ്സന്തതിയാണെന്നു തീർച്ചപ്പെട്ടതായ ഒരു സ്ത്രീക്കു തറവാട്ടുവസ്തുവിന്റെ ഭാഗം കിട്ടണമെന്ന് ആവശ്യപ്പെടാൻ പാടില്ല.

MR. A. HOOGEWERF: Mr. Paramesvaran wants to postpone partition until the death of the *karanavan* and barren women. This is restricting the right too much. How are we to ascertain whether a a woman is going to bear children or not?

MR. P. PARAMESVARAN: പല വിധത്തിലും അറിയാം. ഉദാഹരണമായിട്ട്, ഒരു സ്ത്രീ അറുപതു വയസ്സു കഴിഞ്ഞാൽ പ്രസവിക്കുകയില്ലെന്നുള്ളതു് എല്ലാവർക്കും അറിയാമല്ലൊ.

MR. T. LAKSHMANA PILLAI: I second the amendment.

MR. M GOVINDAN: I oppose the amendment. Mr. Paramesvaran wants, as usual, to restrict the beneficial provision of partition by postponing the event of partition to a further date than is recommended by the Select Committee. The effect of accepting the Select Committee's provision will be to postpone partition only till the death of the mother or other lineal female ascendant. Mr. Paramesvaran would have it that, during the life-time of a male member related as the brother of the female ascendant, who, if he happens to be the senior, is the *karanavan*, during the life-time of such a person the issues belonging to the woman's *thavazhee* in the third degree cannot effect partition, but it should be postponed till the *karanavan's* death. My view is that it should not be so postponed. I do not disguise the fact

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[Mr. K. Paramesvaran Pillai.]

that the Ezhava Law Committee itself made a recommendation similar to the one suggested by Mr. Paramesvaran. But so far as the portion "or of a female member confirmed to have no prospect of issue" is concerned, that portion does not appear in the committee's recommendation. It is a most impracticable suggestion. In the first place, as Mr. Hoogewerf suggested by his question, it would not be a very easy matter to say that the woman is confirmed to have no issue. Who is to confirm that a woman will have no issue? It may be that a woman has no prospect of issue for the reason of some defect. A child with a physical defect may be confirmed to have no issue. Is the whole *tarwad* to wait till the death of that child?

MR. K. PARAMESVARAN PILLAI. Wait until that child has passed the stage of child-bearing.

MR. M. GOVINDAN: But "confirmed" is the word used by Mr. Paramesvaran.

MR. K. PARAMESVARAN PILLAI: Perhaps it is the fault of the translation.

MR. S. PARAMESVARA AIYAR: Mr. Paramesvaran supplied his own translation.

MR. M. GOVINDAN: I oppose the amendment and support the Select Committee's decision.

MR. T. K. VELU PILLAI: I fail to understand what is meant by Mr. Paramesvaran's *own* translation

DEPUTY PRESIDENT: A translation sent by him.

MR. K. PARAMESVARAN PILLAI: I wish to get an answer from Mr. Govindan to my former question.

MR. M. GOVINDAN: Will the member please repeat it?

MR. K. PARAMESVARAN PILLAI: The expression *thavazhee* partition appears to me to be very vague. I want to know whether the attention of the witnesses was drawn to this kind of *thavazhee* partition, *i. e.*, whether the *thavazhee* partition mentioned by Mr. Paramesvaran is the real *thavazhee* partition, or the other is the real one.

DEPUTY PRESIDENT: You are making a speech; you can only put a question at this stage.

MR. K. PARAMESVARAN PILLAI: I am explaining the question. The other is not exactly *thavazhee* partition.

DEPUTY PRESIDENT: It is an expression of opinion. You are enunciating the superior merit of one classification as against another. You cannot do it now.

MR. K. PARAMESVARAN PILLAI: All that I am asking is whether the distinction between the two kinds of *thavazhee* partition

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was brought home to the minds of the witnesses who were examined by the Ezhava Law Committee.

DEPUTY PRESIDENT: When the Ezhava Law Committee examined the witnesses, the distinction between the form of *thavazhee* partition, as mentioned in the bill, and individual partition, must have been specifically described to the witnesses.

MR. M. GOVINDAN: I do not know what was done in each case. But I know that, where witnesses expressed doubt, the committee explained to them what was meant by individual and *thavazhee* partition. Those were clearly understood things when the committee made their recommendations. Now we are striking a golden mean between the two, allowing individual partition to some, and *thavazhee* partition to others who have their mother living.

MR. K. PARAMESVARAN PILLAI: This is a new kind of *thavazhee* partition, proposed by the Law Committee. Was it present in the mind of the Law Committee at the time of the examination of witnesses?

DEPUTY PRESIDENT: This is a compromise proposed by the Select Committee. It is explained sufficiently in their report.

MR. N. RAMAKRISHNA PILLAI: May I know which is the kind of *thavazhee* partition that now prevails among the Ezhavas following the *misradaya* system of inheritance?

MR. M. GOVINDAN: There is no *thavazhee* partition prevalent among them now.

DEPUTY PRESIDENT: Do you say it is not allowed under the law?

MR. M. GOVINDAN: No, it is not allowed. But it is usual in the community to effect *thavazhee* partition by consent.

MR. N. RAMAKRISHNA PILLAI: I want to know whether that custom is recognised by courts?

DEPUTY PRESIDENT: No court has allowed partition without the consent of all the members of a *tarwad*.

MR. A. GOVINDA MENON: Sir, I rise to support Mr. Govindan. If one cannot get the whole, let him get at least half. That is my attitude.

DEPUTY PRESIDENT: Am I to take it that you oppose the amendment of Mr. Paramesvaran?

MR. A. GOVINDA MENON: I certainly oppose the amendment and support Mr. Govindan whole-heartedly. If *thavazhee* partition means anything, it can only mean the kind of partition provided for in the clause. So long as the mother lives, there will be some sort of natural unity between the various members of the family; but, as soon as she dies, the whole unity is gone, and the brothers and sisters, who live separately, would like to get their shares. Then partition becomes necessary. If individual partition is not allowed, *thavazhee* partition of the kind provided in the bill before us is the best. There can be no doubt about it.

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[Mr. V. Subba Aiyar.]

MR. PAUL V. DANIEL: In view of the representations made to me, I feel bound to say a word or two in this connection. Mr. Govindan knows me intimately as a class-mate, a friend and a brother. I hope that he will not misunderstand me when I lay my view of the question before the Council. I was myself not very much interested in this bill for some reason or other. Although I wanted to study the *pros* and *cons* of the bill, I did not do so because Mr. Govindan happened to be its supporter, and I thought he would not go beyond the expressions of the committee or the community. But from my last evening's experience, I found a number of Ezhavas, representing the *misradayam* section, who came to me shedding tears. I do not know why.

DEPUTY PRESIDENT: I hope you did not accept that as an argument.

MR. PAUL V. DANIEL: No, not so. I am speaking from conviction. Those people said that they were not able to understand the meaning of the expression "lineal ascendant in the female line". They wanted me to ascertain from this House whether lineal ascendant in the female line includes at least the mother and her sons. So far as I am able to see, I do not think it is included. I would therefore like that the expression "lineal ascendant in the female line during the life-time of such ascendant or her son", is substituted in the place of the last line of the clause.

MR. N. KUMARAN: May I know whether Mr. Daniel is opposing or supporting the amendment of Mr. Paramesvaran?

MR. PAUL V. DANIEL: I am not in a position either to support or oppose the amendment of Mr. Paramesvaran, until the meaning of the expression that I have referred to is made clear.

DEPUTY PRESIDENT: But you have lost the chance of speaking again. You cannot speak when it is made clear.

MR. A. HOOGEWERE: I join hands with Mr. Govindan in strongly opposing Mr. Paramesvaran's amendment. I think the argument of tears should not be advanced in this Hall.

MR. V. SUBBA AIYAR: Sir, no doubt the "common *karanavan*" or "the person who is the brother of the lineal ascendant" was put in in the original bill. But when we discussed it in the Select Committee, it struck us that the common tie between the children and the other members of the *tarwad* is through the mother. When the mother or the lineal ascendant dies, it is not possible to expect ordinarily any cordiality of relationship. Hence the necessity for the deletion of the same. If we accept Mr. Daniel's suggestion, the result will be that there may always be a common *karanavan*; for, after the female ascendant's death, her elder son will be the common *karanavan* and her children will never be able to divide. That was not a desirable contingency; and therefore, the Select Committee has decided that, during the life-time of the female ascendant, partition cannot be claimed, except with

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her consent. If the amendment were accepted, we would not be allowing partition even with her consent. Probably, if partition is allowed, the interests of persons who are now *karanavans* may be affected. The *karanavan* may not be entitled to get a good share if a division is made, because we say that each will be entitled only to his individual share. However, it is for the House to decide whether the amendment should be accepted or not. I have pointed out the difficulty which the amendment will bring about; for, partition cannot be effected until all the lineal ascendants are dead, which is not practical. I leave it to the good sense of the House to accept or reject the amendment.

DR. N. KUNJAN PILLAI: Sir, I just want to say that this golden medium that Mr. Govindan referred to was struck mainly at my instance at the Select Committee stage of the bill. The Ezhava Law Committee recommended only the kind of *thavazhee* partition proposed by Mr. Paramesvaran. To my mind, it appeared that a *thavazhee* partition of that kind was no better than no partition. In a *tarwad* consisting of a woman, her brothers, sons and daughters, it might sometimes so happen that the youngest uncle is younger than the oldest nephew. This will bring about the curious phenomenon of a nephew becoming the *karanavan* during the life-time of an uncle. Such an arrangement will never be conducive to the interests of the *tarwad*; and whatever be the feelings and sentiments of the people, if there is any possibility of preventing this—if I may be allowed to say—unnatural arrangement in the management of *tarwads*, we should do so. This was the reason that prompted me to plead vehemently in the Select Cammittee for this advanced form of *thavazhee* partition which has now been included in the bill. Personally, I was prepared to go even further and include a provision for outright individual partition. But seeing that the representatives of the community concerned were not prepared to go so far, I yielded to their wishes and was content with the provision for an advanced form of *thavazhee* partition. To-day also I take the same position. I hope I will not be accused of having made a somersault (*Laughter.*) If the representatives of the community are satisfied with the existing provision in the bill, it is better that the Council accepts it. The *thavazhee* partition proposed by Mr Paramesvaran is worse than having no partition and hence I oppose his motion.

MR. N. KUMARAN: It appears from what has been said that the position taken up by Mr. Paramesvaran, if accepted, will be more or less impossible and illogical. No doubt, the Ezhava Law Committee made a recommendation almost in the same tone. But, considering the difficulties suggested by Dr. Kunjan Pillai, a case is possible in which there would be a *karanavan*, who is not a common *karanavan* at the same time; and a condition of affairs would exist in which there would be a junior member who would be entitled to be a common *karanavan*. As Dr. Kunjan Pillai pointed out, there may be a senior nephew becoming a *karanavan* and a junior uncle or a junior member not being a *karanavan*. That is a very illogical provision. I therefore, think that the amendment of Mr. Paramesvaran has to be objected to if we have any respect for logic.

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[MR. A. Govinda Menon.]

MR. P. PARAMESVARAN : എനിക്ക് ആദ്യം പറഞ്ഞതിൽ കൂടുതലായി ഒന്നും പറയാനില്ല.

The amendment was then put to the vote and lost.

The question that clause 29 stand part of the bill, was put to the vote and carried.

Clause 29 was added to the bill.

Clause 30.

MR. K. P. RAMAN PILLAI: Sir, I move that the expression "or with her consent" occurring in line 2, clause 30, as amended by the Select Committee, be deleted. My point is that we are conferring a right more or less in accordance with the desire and wishes of the community.

DEPUTY PRESIDENT: Mr. Raman Pillai, I would draw your attention to one matter. Clause 29 has been accepted by the House. Just see if your amendment will be in order. The modification that has been suggested by the Select Comittee is that, even during the life-time of a lineal ascendant, a division may be effected with her consent. You now propose to delete the words "with her consent" Then it would mean that a division may be effected during her life-time without her consent. I think that conflicts with clause 29 which has just been passed.

MR. K. P. RAMAN PILLAI: My amendment will be consistent with the provision in clause 29. During her life-time there could be no partition and her consent is not taken as a criterion for division by *thavazhees*. The property should be divided on the death of the mother, and equally among the children. That is a wholesome provision which would enable the mother to have peace of mind. She may not be molested by an over-anxious son desirous of getting away from the rest of the family, especially if that son happens to enjoy the affection and confidence of the mother. As it is, he might persuade the mother to give her consent or compel her to effect partition, though the majority of the members of the collateral *thavazhees* of the *tarwad* may not be willing to do it Thus the provision in sub-clause (1) will be incongruous and illogical. I, therefore, put forward this amendment hoping that the Law member will accept it.

MR. C. P. KOCHUKUNJU PILLAI: I second it.

MR. A. GOVINDA MENON: I oppose the amendment because it behoves one who is a supporter of individual partition like myself, and, perhaps, Mr. Raman Pillai also, to do so. The very fact that the mother is the unit of the *thavazhee*, presupposes that she possesses the right of keeping her children with her. Now, if she thinks that she should set apart property for her sons, it is only right that she should be given the freedom to do so. And the provision already in the clause is therefore necessary.

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The possible disadvantages alluded to by my friend can be used as arguments for the other side. If one of the children wants partition, and if the mother is not willing or has not the power of giving her consent to such partition, the members of the *tarwad* could make a hell of heaven and so create an unhappy position. I think that, so long as the mother is made the unit of the *thavazhee*, it is but right that she should be given the right to effect partition. That will do away with a good deal of harm. I, therefore, oppose the amendment.

MR. V. SUBBA AIYAR: Sir, the reason for introducing the expression "with her consent" was this. There may be cases in which an old mother may wish to see that before her death partition is effected to the best satisfaction of all concerned and that the children may not fight with one another after her death. In case some of the members object to the partition, the majority of the adult members may, with the consent of the mother, institute a suit for the same. It is for this purpose that the provision is put in. I do not think it will seriously interfere with the right to partition. But if Mr. Raman Pillai thinks it will, I have no objection to the omission of the expression "with her consent."

MR T. K. VELU PILLAI: Sir, although Mr. Subba Aiyar has no objection to delete the expression, I, for one, have very serious objection. To my mind, the retention of those words extends the beneficial operation of clause 29. There may be cases in which, with the mother's consent, partition may be effected to the advantage of all. Therefore, I find it very difficult to understand how gentlemen who are in favour of individual partition advocate the deletion of the words "or with her consent". The matter is very important as it extends the influence of the previous section; so, I am for its retention.

The amendment was put to the vote and lost.

DEPUTY PRESIDENT: Mr. Raman Pillai, you have two more amendments.

MR. K. P. RAMAN PILLAI: In the light of the fact that my former amendment has been out-voted, I do not wish to move the first amendment, for it is better, as the clause now stands, that the consent of the majority is taken when "with her consent" forms part of the clause.

The next amendment also I do not move.

The following amendments were accordingly not moved:

MR K. P. RAMAN PILLAI:

Clause 30—Paragraph (1). Delete the words "represented by the majority of the adult members thereof".

Paragraph (2). Add at the end the words "or whose mother has predeceased such lineal ascendant".

DEPUTY PRESIDENT: The following amendment stands in the name of Mr. Paramesvaran:

Omit paragraph 2, clause 30.

Mr. Paramesvaran, you may move it.

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[Mr. P. Parameswaran.]

MR. P. PARAMESVARAN: ന 0 -ാംവകുപ്പിൽ ഉ-ാം ഖണ്ഡിക വിട്ടേക്കണം എന്നാണ് എന്റെ പ്രമേയം. ഇതിനെ സെലക്ട് കമ്മിറ്റിക്കാർ ചേർത്തിനു പറഞ്ഞിരിക്കുന്ന കാരണം സോദരന്റെ ജീവിതകാ ത്തു സഹോദരിയുടെ മക്കാം ഭാഗം അവകാശപ്പെടാൻ പാടില്ല എന്ന് ആദ്യത്തെ ബില്ലിൽ പറഞ്ഞിരിക്കുന്നതു ഉണ്കരമല്ലെന്നും പൂവിക യുടെ മരണശേഷം അവളുടെ മക്കാംക്കു ഭാഗിക്കാൻ സ്വാതന്ത്ര്യം ഉണ്ടാ യിരിക്കുന്നതാണ് സംബന്ധപ്പെട്ട ആളുകാംക്കു നന്നായിരിക്കുന്നത്എ ന്നും അതുകൊണ്ട്, സെലക്ട് കമ്മിറ്റിക്കാർ പറഞ്ഞിരിക്കുന്ന ന്യായങ്ങാം എ ല്ലാം (എ) മരുമക്കവഴി രീതിയെ നശിപ്പിക്കണമെന്നും (ഉ) ഞങ്ങളെ മക്കവഴിക്കാരാക്കി തീർക്കണം എന്നും (ന) തറവാട് എന്നതിനെ നിറ ത്തലാക്കണം എന്നും മറ്റുമുള്ള വിചാരത്തെ ലക്ഷ്യമാക്കി വെച്ചുകൊ ണ്ട് അതിലേക്കാ യി പറഞ്ഞിരിക്കുന്ന ന്യായങ്ങാം ആകയാൽ ആ വിധം ലക്ഷ്യത്തിനു ഉതകുന്നവ തന്നെ. പക്ഷെ (എ) മരുമക്കവഴിയാണ് ഞ ങ്ങാംക്കു വേണ്ടത്; (ഉ) മക്കവഴി ഞങ്ങാക്കു വേണ്ട; (ന) തറ വാട്ടു സമ്പ്രദായത്തെ നിലനിർത്തിക്കണം; എന്നെല്ലാം ദൃഢനിശ്ചയമാ യി അഭിപ്രായപ്പെടുന്ന ഞങ്ങാംക്ക് ഇവ യോജിച്ചുവയ്ക്കുന്നില്ല.

'സന്താനമില്ലാത്ത പെൺമക്കാം' എന്നതിനു അർത്ഥം (എ) സ ന്താനം ഉണ്ടാകുകയില്ല എന്ന് തീച്ചപ്പെട്ട വയോധികകാം എന്നും (ഉ) മേൽ സന്താനം ഉണ്ടാകാം എന്നിരുന്നാലും ഇപ്പോാം ഇല്ല എന്ന ഇനത്തിലുള്ളവരും ആകുന്നു. ഇതിൽ ഒന്നാമത്തെ കൂട്ടർക്ക് സന്താനമു ള്ളവരാടൊപ്പം ഭാഗം കുത്തിലധികവും രണ്ടാമത്തെകൂട്ടർക്ക് ഈ നി ലയിലുള്ള ഭാഗം തീരെ കുറവും ആയിരിക്കും. ഏതായാലും ന 0 -ാം വ കുപ്പു ഉ-ാം ഉപവകുപ്പിനെ നീരേ വിടുക്കണം.

MR. G. PARAMESVARAN PILLAI: I second the motion.

MR. V. SUBBA AIYAR: Sir, I can only say that this amendment is consequential upon the amendment proposed by Mr. Parameswaran to clause 29. If the *thavazhees* of the sisters are to get a share, it will be the share of all the members of that *thavazhee*. Then the common *kuranavan* and the sisters without any issue should be entitled to the same share. These latter do not represent any *thavazhee*; but they must have a share. It is to provide for such a contingency that paragraph 2 is put in. I do not know how this paragraph could be deleted when the amendment to clause 29 has been negatived.

MR. P. PARAMESVARAN: എന്നാൽ ഞാൻ ഭേദഗതിയെ പിൻ വലിച്ചുകൊള്ളുന്നു.

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The amendment was, by leave, withdrawn.

DEPUTY PRESIDENT: The question is that clause 30 do stand part of the bill.

The motion was put to the vote and carried.

Clause 30 was added to the bill.

Clause 31.

MR. N. RAMAKRISHNA PILLAI: I move that the following be added as sub-clause (3) to clause 31:

For the purposes of inheritance and partition of *tarwad* property the expressions 'child' and 'children' include the descendants of deceased daughters but do not include the descendants of deceased sons.

In the following clause, provision is made with regard to the partition of *makkathayam* property. With respect to this, "children" includes the children both of males and females. I thought it necessary to define the word so as to include the descendants of female children only. Such a provision is necessary to make clear the distinction we are making between *makkathayam* and *tarwad* properties in the matter of partition. Hence my amendment. I hope the Council will accept it.

MR. M. N. PILLAI: I second it.

MR A. GOVINDA MENON: I beg to oppose the amendment. We have discussed the previous clause without reference either to *makkathayam* or any other property, but referring only to the property of an intestate. I think we can follow the same course in this clause also. Moreover, this amendment is against the tendency of this Council which is in favour of *makkathayam*. There is no reason why, when brothers and sisters effect partition, the children of a predeceased daughter alone should be entitled to a share, and the children of a predeceased son should not be.

DEPUTY PRESIDENT: I think this clause does not allude to that; clause 31 does not provide for the particular contingency that you are referring to. This clause speaks of "children" in reference to partition. The word "children" does not mean children how-low-soever; "children" means children and nothing more. If you proceed on the assumption that the clause brings in sons' children, I may at once say that the clause, as settled by the Select Committee, does not go so far. It speaks of children only with respect to the question of partition of *tarwad* properties.

MR. A. GOVINDA MENON: What I want to say is that this amendment should not be accepted by the Council, for this reason that this Council has supported the principle of individual partition morally.

MR. V. SUBBA AIYAR: That was in regard to the Nair Regulation Amendment Bill; we are now at the Ezhava Bill.

MR. A. GOVINDA MENON: But the goal is the same. If individual partition is to be attaind, such an amendment is fatal.

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[Mr. V. Subba Aiyar.]

MR. V. SUBBA AIYAR: Sir, I agree with Mr. Govinda Menon in opposing the amendment, though not for the reason he has advanced. Clause 31 refers to *tarwad* property only. I do not think that sons' children have that claim which the *thavazhees* of the sons have. 'Children' includes only the descendants of the daughters in the female line. After the male there is no descendant at all. The word *thavazhee* is defined in the bill. In this view of the matter, the amendment of Mr. Ramakrishna Pillai is unnecessary.

MR. N. RAMAKRISHNA PILLAI: I withdraw the amendment.

The amendment was withdrawn by leave of the House.

The question that clause 31 stand part of the bill was put to the vote and carried.

Clause 31 was added to the bill.

Clause 32.

Mr. N. RAMAKRISHNA PILLAI: Sir, my amendment is as follows:

In line 2, between the words "*makkathayam* property" and "shall", insert "whether acquired before or after this Regulation has come into force".

My object in making this amendment is to make it clear that the clause applies to cases of property acquired before and after this regulation has come into force. I need hardly say that there was a good deal of controversy in regard to the interpretation of a similar clause in the Nair Regulation. I refer to the decision in 8. T. L. J. 397 and other cases. In one of these cases, the corresponding section of the Nair Regulation was held to apply only to property acquired before the date on which the regulation came into force. In another case, 9 T. L. J. 404, a Full Bench of the High court held that that section applies to properties acquired before and after the regulation came into force. A further difficulty was created by the recent decision in 12 T. L. J. 414. The courts are allowed complete discretion to interpret the section as they choose. It is to obviate all these difficulties that I have brought forward this amendment. The clause, read with the amendment, will run as follows:—

32. (1) Except where a contrary intention is expressed in the instrument of gift or devise, *makkathayam* property, *whether acquired before or after this regulation has come into force*, shall be liable to be divided among the wife and each of the children in equal shares.

I move the amendment for the acceptance of the House.

MR. M. N. PILLAI: I second it.

MR. V. SUBBA AIYAR: Sir, no doubt, under the existing law as interpreted by the High Court, the clause, as it stands, would mean that *makkathayam* property, whether obtained before or after this regulation, will be divisible. Though there was conflict of rulings at the outset, it has been finally set at rest by a Full Bench decision saying that the section *does* apply to acquisitions made *before* the date of the

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passing of the Nair Regulation. I think therefore that the amendment is not necessary. But, in the light of the fact that it will make the meaning clear, I have no objection to accept the amendment.

MR. G. PARAMESVARAN PILLAI: What about clause 3, Sir?

DEPUTY PRESIDENT: We will come to that later on.

MR. G. PARAMESVARAN PILLAI: Is Mr. Subba Aiyar aware of the operation of clause 3 or the corresponding section in the Nair Regulation?

MR. V. SUBBA AIYAR: It is after an elaborate discussion of the provisions contained in the Nair Regulation and their effect that the Full Bench have given the ruling.

MR. G. PARAMESVARAN PILLAI: Is Mr. Subba Aiyar aware that it has been doubted in another case, in 12 T. L. J?

MR. V SUBBA AIYAR: Yes. That is why I have already said that, to make the meaning clear, I have no objection to accept the amendment.

MR. M. GOVINDAN: I am sorry I have to oppose the amendment. I am for extending the beneficial provisions regarding divisibility of *makkathayam* property to any extent to which it can be legitimately taken. But considering the confusion that has been created, the number of conflicting rulings made, and the difficulty and trouble we will be creating in *tarwads* by introducing vague expressions like "before", I object to the amendment. It is to the use of the word "before" that I particularly object. It will make this regulation applicable to a number of *tarwads* which possess only *makkathayam* property. There is no time-limit imposed when we say "before". It means, of course, before the date of this regulation; but it does not specify the time from which it will apply. It is there where the confusion comes in. Most of the *tarwads* that are now existing might have had a historical origin in *makkathayam*. If this amendment is passed, we shall be granting individual partition of an intricate kind to those *tarwads*, while we are denying it and granting only *thavazhee* partition in respect of other *tarwads*. A perusal of the rulings in 8, 9 and 12 T. L J. will show that the uncertainty was about the date from which the *makkathayam* property came into being. It is there that the uncertainty lies. Of course, the courts decided it one way; but it has again become a subject-matter for controversy. It so happened that the first decision proceeded on a judgment that I myself passed; and retrospective effect was given with a view to extend the beneficial provisions. That was what the late Chief Justice Mr. Raman Menon said at that time. That was certainly very good. But to what extent is the retrospective effect to be given to this section? That has not been settled. Leaving that position unsettled is more injurious to the community than restricting the thing and giving a clear statement of law, making the provision applicable only to *makkathayam* property obtained after the date of this regulation.

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[Mr. P. Parameswaran.]

MR. JOSEPH PANJIKARAN: When once the property has passed from the hands of the original donees or devisees, will it not be a misapplication of the term to call the property *makkathayam* property? For, according to the definition in the bill, *makkathayam* property is property obtained from the husband or father by the wife or child or both of them by gift, inheritance or bequest."

DEPUTY PRESIDENT: We proceed on the assumption that the property is still where it was—in the hands of the donees.

MR. M. GOVINDAN: One original donee may be alive and another may be dead. And, by succession, the property of the deceased donee might have passed to the deceased donee's representatives.

MR. JOSEPH PANJIKARAN: When all the original donees or devisees are dead, will the property be still *makkathayam* property or will it be *tarwad* property?

MR. M. GOVINDAN: It may be conceded that it may be called *tarwad* property.

MR. P. K. NARAYANA PILLAI: May I ask then, if under "*makkathayam* property" *tarwad* property is also included in clause 32?

MR. V. SUBBA AIYAR: The word "before" cannot apply to *tarwad* property.

MR. M. GOVINDAN: So far as inheritance is concerned, it is quite clear that the law of intestate succession can apply only to the property obtained after the date of the opening of the succession, that is to say, after the date of the passing of this regulation. But in the case of gift or bequest, the point is not clear. I would, therefore, earnestly request the House to consider the difficulty and only accept the amendment so far as the latter portion of it is concerned. I would suggest an amendment that "acquired after the date of passing of this regulation" be inserted between "*makkathayam* property" and "shall".

MR. N. RAMAKRISHNA PILLAI: I am prepared to accept the amendment.

DEPUTY PRESIDENT: The question is that the amendment just moved by Mr. Govindan and accepted by the mover of the original amendment be accepted by the House. It runs as follows:

In line 2, clause 32, insert, between "*makkathayam* property" and "shall" the words "acquired after the date of passing of this regulation".

The motion was carried.

MR. P. PARAMESVARAN: നാലാംവകുപ്പിൽ രണ്ടാം വരിയിൽ "ഭാര്യയും മക്കളിൽ ഓരോരുത്തർക്കും" എന്ന ഇടങ്ങിയുള്ള വാക്കുകൾക്ക

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പകരം താഴെ എഴുതിയിരിക്കുന്നതിനെ ചേർക്കണം എന്നാണ് എന്റെ പ്രമേയം.

"ഭാര്യയ്ക്കും മക്കൾക്കും കൂട്ടുസ്വത്തായിരിക്കേണ്ടതും അത് ഒരു സബ് തറവാടായിരിക്കേണ്ടതും ആകുന്നു."

ഈ വകുപ്പിൽ വിവരിച്ചിരിക്കുന്ന പ്രകാരം ഭാര്യയ്ക്കും മക്കളിൽ ഓരോരുത്തർക്കും തുല്യാവകാശമായി വിഭജിക്കുന്നതായാൽ അനേകവിധമായ കഷ്ടനഷ്ടങ്ങൾ വന്നുകൂടും. മക്കളിൽചിലർ പ്രാപ്തിയായവരും ഈ മക്കത്തായ സ്വത്തിനെ ചിലവാക്കി പഠിച്ചു മിടുക്കന്മാരായവരും മറ്റു ചിലർ കൂട്ടികാര്യം തീരെ മൈനരും ആയിരിക്കും. അങ്ങിനെയുള്ള അവസ്ഥയിൽ ഈ വസ്തുവിനെ തുല്യമായി വിഭജിക്കുമ്പോൾ സമത്വമല്ല അസമത്വമാണ് ഉണ്ടാക്കുന്നത്. അതുകൊണ്ടു ഞങ്ങളുടെ പൂർവ്വാചാരപ്രകാരം ഈ സ്വത്തിനെ ഒരു പ്രത്യേക തറവാടായി സൂക്ഷിക്കേണ്ടതാണ്.

MR. K. C. RAJA RAJA VARMA: I second it.

DEPUTY PRESIDENT: The amendment just moved runs as follows:

In lines 2 and 3 of clause 32, substitute the following for the words commencing from 'liable to' in line 2, to the end: "the joint property of the wife and children who shall become a sub-*tarwad*."

MR. V. SUBBA AIYAR: Sir, this amendment is against the principle that we have accepted in clause 31. In that, we have said that property is divisible equally among the sharers. That clause has been passed by the House. If this amendment is accepted, it will be against that.

As regards the safeguarding of the interests of minors, I may say that there will always be minors. The fact that there are minors should not in the least interfere with partition. The courts will see that the interests of minors are not prejudiced, and they will provide sufficient safeguards. I think, therefore, that the amendment cannot be accepted as it will be inconsistent with the one we have already accepted.

MR. P. PARAMESVARAN: ഞാൻ ഭേദഗതിയെ പിൻവലിച്ചുകൊള്ളുന്നു.

The amendment was, by leave, withdrawn.

DEPUTY PRESIDENT: The next three amendments, standing in the names of Mr. Paramesvaran, Mr. Ramakrishna Pillai and Mr. Kumaran are identical. I think it is enough if Mr. Paramesvaran alone moves the amendment.

MR. P. PARAMESVARAN: എന്റെ—

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[Mr. G. Paramesvaran Pillai.]

MR. N. RAMAKRISHNA PILLAI: Sir, a word of explanation. I am not going to move my amendment. For, in a subsequent amendment that stands in my name, I propose to delete the explanation and substitute a sub-clause. It may not be proper, therefore, if Mr. Paramesvaran moves his amendment now.

DEPUTY PRESIDENT: You want permission to move for the deletion of the explanation and for inserting a sub-clause. Yes, you may do so. Mr. Paramesvaran need not move the amendment for the deletion of the explanation, as it is involved in Mr. Ramakrishna Pillai's amendment.

MR. N. RAMAKRISHNA PILLAI: My amendment is that, instead of the explanation, the following be substituted as sub-clause 2, clause 32:

"(2) For purposes of inheritance and partition of *makkathayam* property the expression "child" and "children" include the descendants of children both male and female."

I suppose that the Ezhava bill makes a distinction between *tarwad* property and *makkathayam* property. In respect of *makkathayam* property, the issue of the male children are also entitled to succeed to the property of the father. Therefore, in respect of inheritance and partition of *makkathayam* property, "children" should include the children of the son as well as of the daughter. In the existing provision in this clause, the expression "children" will mean the *thavazhee* of deceased daughters only. I think this is inconsistent with the principle adopted in the bill. The issue of the male children should also be entitled to succeed to the *makkathayam* property, and, for this purpose, my amendment should be accepted. When I moved my amendment to clause 31, it was pointed out that that amendment was unnecessary because the principle of *marumukkuthayam* law that the property should go only to the descendants of daughters and not of sons was not intended to be abrogated. In this case, it is absolutely necessary that provision should be made to make the meaning of the expressions "child" and "children" clear. I, therefore, move my amendment.

MR. T. K. VELU PILLAI: I second the motion. In order to safeguard the interests of children, which would certainly be present in the minds of the grandfather, I think it is absolutely necessary that the amendment should be accepted. It is not unlikely that a court will continue to hold that 'children' means children of the first generation. I think the rules of equity require the adoption of Mr. Ramakrishna Pillai's amendment.

MR. G. PARAMESVARAN PILLAI: I should like to ask Mr. Velu Pillai whether he is in support of the position that children includes the children and the grandchildren of the females and also of the males in regard to this particular matter.

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MR. T. K. VELU PILLAI: I am in entire agreement with Mr. Ramakrishna Pillai.

MR. V. SUBBA AIYAR: Sir, I think Mr. Ramakrishna Pillai's amendment is quite consistent with the amendment that the House has already accepted in regard to clause 15. In that clause, which relates to intestate succession, 'children' includes the descendants of sons and daughters how-low-so-ever. I think the same thing may be extended to the present case also. All the same, I would suggest a slight amendment. Instead of the elaborate wording of Mr. Ramakrishna Pillai's amendment, the following may be substituted as sub-clause 2, in place of the explanation;

For the purposes of this clause, the expression 'children' includes the issue of deceased children how-low-so-ever.

MR. N. RAMAKRISHNA PILLAI: I accept it.

MR. K. P. RAMAN PILLAI: I should like to speak a word.

DEPUTY PRESIDENT: You may do it, Mr. Raman Pillai. I am just stating the position. Instead of the amendment which Mr. Ramakrishna Pillai first moved, he is now satisfied with the amendment of Mr. Subba Aiyar, just moved, *viz.*, the insertion of the following as sub-clause (2) in place of the present explanation:

"For the purposes of this section, the expression 'children' includes the issue of deceased children how-low-so-ever."

MR. K. P. RAMAN PILLAI: The amendment has not made the position quite clear. If a person dies leaving him surviving his wife and two children, and one of the children dies leaving four grandchildren, then, according to the amendment, the property will be divided into 4+1+1 or 6 shares.

MR. V. SUBBA AIYAR: No; sub-clause (2) will provide for this. Of course, it will have to be amended in the light of this amendment.

MR. K. PARAMESVARAN PILLAI: It appears to me that this explanation and sub-section (2) are ill-drafted. In opposing the amendment, I submit that I do not object to the spirit of the amendment. But it appears to me to be ill-drafted. As Mr. Raman Pillai pointed out, both the explanation and the amendment will lead to the inference that the property will have to be divided *per capita*. What Mr. Subba Aiyar says is that sub-clause (2) will provide for this. This is what that sub-clause says:

"In the partition of *makkathayam* property, the *thavazhee* of a deceased daughter shall be entitled only to such share as the daughter herself, if alive, would have taken."

MR. V. SUBBA AIYAR: I say again that that sub-clause has also to be amended in the light of this amendment.

MR. K. PARAMESVARAN PILLAI: The shares that the children of a deceased daughter would take depend upon the share that the daughter herself, if alive, would have taken at the time of division. This is what sub-clause (2) says. Suppose, at the time of division, there were three sons, one daughter and four grandchildren by her, and one

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[Deputy President.]

grandchild by a deceased daughter. According to clause 32, part (1), and the explanation, in the division the deceased daughter and the child must be taken to be one; the grandchildren by the daughter who is alive and herself must be counted as another; the sons and the widow counted each separately; and the division should be made *per capita* among these. By part (2), it is clear that the deceased daughter's child would be entitled to what that daughter herself would be entitled to. That daughter's share depends upon sub-clause (1) and the explanation to the clause. That is to say, it will depend upon the number of children alive, who have sons and daughters and the number of other children without sons and daughters, who are also alive. But by sub-clause (2), if a deceased daughter leaves grandchildren behind her, they will only take such share as their mother would have taken, if alive, at the time of partition. This depends upon sub-clause (1) and the explanation. It appears to me that that is not what is exactly meant. I think what is meant is that the daughters and the widow must be entitled to an equal share of inheritance. All the children of one deceased daughter or son should take one share, that is, the share of the mother or the father as the case may be; but the clause as drafted would mean an entirely different thing. Sub-clause (2) is not sufficient to explain or control the result of sub-clause (1) and the explanation as amended or even as it stands, unless you take *thavazhee* to mean not the members of the *thavazhee* but the *thavazhee* as a whole. But that is not the definition of *thavazhee* given in the bill. *Thavazhee* of a female means a group of persons consisting of that female and her issue how-low-so-ever in the female line. It is not the whole corporation but the individual. Therefore, it appears to me that the whole clause requires re-drafting in order to bring out the sense that is intended.

MR. V. SUBBA AIYAR: May I have the member's draft Sir?

MR. K. PARAMESVARAN PILLAI: I would delete the explanation in the first place and—

DEPUTY PRESIDENT: Mr. Paramesvaran Pillai, before we take up alternative lines of drafting, let us exhaust those on the table. The next amendment is in the name of Mr. Kumaran. He may move it now.

MR. N. KUMARAN: My opinion is that no explanation is required in view of my amendment. The difficulty would be cleared if my amendment is accepted. I, therefore, move the amendment which runs as follows:

"Substitute the following for the existing sub-clause (2): "In the partition of *makkathayam* property, the issue how-low-so-ever of a deceased child, together with the widow, if any, in the case of a son, shall be entitled to only such share as the child itself if alive, would have taken."

DEPUTY PRESIDENT: Suppose 'children' means only children and not grandchildren, can you not omit "together with the widow, if any, in the case of a son"?

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MR. N. KUMARAN: In that case, I would omit "together with the widow, if any, in the case of a son." The explanation may be deleted.

MR. K. PARAMESVARAN PILLAI: I second it.

MR. V. SUBBA AIYAR: I can accept the amendment, as it is exactly the same draft as mine. I said, before Mr. K. Paramesvaran Pillai moved for the re-drafting of the sub-clause, that it had to be re-drafted in the light of Mr. Ramakrishna Pillai's amendment.

The explanation need not be deleted, as its deletion or retention makes little difference. It only defines the word "child." I have no objection to accept the amendment.

DEPUTY PRESIDENT: The amendment before the House is that the following be substituted as sub-clause (2):

"In the partition of *makkathayam* property, the issue how-low-so-ever of a deceased child, shall be entitled to only such share as the child itself, if alive, would have taken".

The explanation defining "child" may be deleted.

MR. N. RAMAKRISHNA PILLAI: May I point out that, even if Mr. Kumaran's amendment is accepted, the explanation is necessary? His amendment provides only for the devolution of property in the case of partition. The explanation regarding "child" and "children" arises only out of inference. I think it is better that, to make the meaning clear, an explanation of "child" and "children" is added separately.

DEPUTY PRESIDENT: "Issue how-low-so-ever"—I think it is clear to all lawyers!

MR. N. RAMAKRISHNA PILLAI: But that is only inferential.

MR. V. SUBBA AIYAR: In Mr. Kumaran's amendment, I would delete the word "only".

DEPUTY PRESIDENT: Are you prepared to accept it, Mr. Kumaran?

MR. N. KUMARAN: Yes.

MR. V. SUBBA AIYAR: Again, there must be some connection between the first clause and the amendment. I think it is better to put it as a proviso.

MR. N. KUMARAN: It may be added as a proviso. I accept the suggestion.

DEPUTY PRESIDENT: The amendment before the House is as follows:

Delete the explanation and the existing sub-clause (2); and insert the following as a proviso to the clause:

"Provided that, in the partition of *makkayathayam* property, the issue how-low-so-ever of the deceased child shall be entitled to such share as the child itself, if alive, would have taken."

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[Mr. N. Ramakrishna Pillai.]

MR. P. K. NARAYANA PILLAI: In opposing the amendment, I wish to bring to the notice of the Council a difficulty which may arise. The particular amendment contemplates that, in the case of the partition of *makkathayam* property, "the issue how-low-so-ever of a deceased child shall be entitled to such share as the child itself, if alive, would have taken." Now take the case of two sisters A and B. A has two daughters C and D. C in turn has a daughter E. At the time of partition, B and E alone are alive. What is the share that E will be entitled to? Is it half or a quarter? If E's mother C were alive with her sister D, C would get only one-fourth. How can E be held entitled to one-half in such circumstances? The passage quoted above is not quite clear in its operation.

DEPUTY PRESIDENT: It is a *per stirpes* arrangement that is contemplated.

MR. P. K. NARAYANA PILLAI: If that is the meaning to be gathered from the amendment, I think it is against Mr. Kumaran's object.

DEPUTY PRESIDENT: He wants to give the right of representation to the child of a deceased child, I think.

MR. P. K. NARAYANA PILLAI: A case may arise where the right of representation may be claimed by children of different grades.

DEPUTY PRESIDENT: But it applies to all the children put together.

MR. P. K. NARAYANA PILLAI: The amendment does not say so. But, if that is the meaning, I have no objection to it. Only, to my mind, it is not quite clear.

DEPUTY PRESIDENT: In that view, do you oppose the amendment?

MR. P. K. NARAYANA PILLAI: Yes, I oppose the amendment.

MR. V. SUBBA AIYAR: To my mind, the meaning of "issue" is very clear.

DEPUTY PRESIDENT: I shall now state the position. We are now at clause 32. Mr. Parameswaran's amendment for the deletion of the explanation has not been moved as it is covered by the subsequent amendment of Mr. Ramakrishna Pillai. His amendment runs as follows:

Insert the following as sub-clause (2) in the place of the explanation, numbering the existing sub-clause (2) as sub-clause (3) :—"For the purposes of this clause, the expressions 'child' and 'children' include the issue of a deceased child how-low-so-ever."

Am I to take it that Mr. Ramakrishna Pillai withdraws that amendment in view of the further amendment moved by Mr. Kumaran?

MR. N. RAMAKRISHNA PILLAI: I withdraw it.

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The amendment was, by leave, withdrawn.

DEPUTY PRESIDENT: In the notice paper there are two more amendments to be moved by Mr. P. Paramesvaran and Mr. Govinda Menon. Will the gentlemen please say whether they press it or not?

MR. P. PARAMESVARAN: ഒന്നും ഭേദഗതിക്കൊണ്ടുവരുന്നില്ല.

MR. A. GOVINDA MENON: I do not move my amendment.

The following amendments were not moved:

MR. P. PARAMESVARAN: Delete sub-clause (2).

MR. A. GOVINDA MENON: Delete sub clause (2).

DEPUTY PRESIDENT: Then the only amendment before the House is that the following proviso be added to clause 32, after deleting the explanation and sub-clause (2):

Provided that in the partition of *makkathayam* propefty, the issue how-low-so-ever of a deceased child shall be entitled to such share as the child itself, if alive, would have taken.

May I take it that the House passes it?

MR. K. V. NATESA AIYAR: I would suggest a verbal change.

DEPUTY PRESIDENT: I am sorry I cannot allow you to do so now. The question has already been put. You may make your suggestion after the vote is taken.

The question was put and carried.

MR. K. V. NATESA AIYAR: "Provided that in the partition of *makkathayam* property, etc."—that is the amendment accepted by the House. The words "*makkathayam* property" are already in the clause, so that it is better to say "provided that in such partition etc." to avoid repetition.

There is another verbal change. Mr. Pitt and myself were doubting the meaning of "issue of a deceased child."

DEPUTY PRESIDENT: Before you suggest another change, may I know if the one you have already suggested will be acceptable to Mr. Subba Aiyar?

MR. V. SUBBA AIYAR: I accept it.

MR. P. K. NARAYANA PILLAI: Is it in order to make verbal alterations after the House has accepted the amendment?

DEPUTY PRESIDENT: It is open to the House to make verbal alterations if it thinks necessary.

MR. P. K. NARAYANA PILLAI: May I know under what rule it is allowed?

DEPUTY PRESIDENT: You rise to a point of order. Then I may say that it is not under any rule that I am admitting it. I place myself unreservedly in the hands of the House. If the House objects to the amendment, I will not allow it to be moved. If you have any technical objection, I rule the amendment out of order.

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[Mr. K. Parameswaran Pillai.]

MR. P. K. NARAYANA PILLAI: I object to it.

DEPUTY PRESIDENT: Then I rule it out of order.

The question now is that clause 32, as amended, stand part of the bill.

MR. K. PARAMESVARAN PILLAI: I oppose it. I wish to bring to the notice of the Council one or two difficulties in the application of this provision. The clause would apply only to cases where the wife and children are alive. It is doubtful whether it would apply to cases in which all the children are dead while the grandchildren alone are alive. It appears to me that it will not apply. I will give my reasons. This clause applies to the partition of *makkathayam* property. The definition of *makkathayam* property, as given in clause 4, is this:

Makkathayam property is property obtained from the husband or father by the wife or child or both of them by gift, inheritance or bequest.

In the hands of the grandchildren exclusively, or great-grandchildren also, and in the absence of the widow and children of the deceased, the property ceases to be *makkathayam* property.

DEPUTY PRESIDENT: It is inherited by them as *makkathayam* property.

MR. K. PARAMESVARAN PILLAI: By whom?

DEPUTY PRESIDENT: By the collective group of heirs.

MR. K. PARAMESVARAN PILLAI: But when the property descends to the grandchildren exclusively in the absence of the widow and children of the deceased, the property ceases to be *makkathayam* property. It must be taken as *marumakkathayam* property. It could be taken as *makkathayam* property only when it remains in the hands of the person from whose father or husband it was obtained.

DEPUTY PRESIDENT: You say it depends on the character of the acquisition.

MR. K. PARAMESVARAN PILLAI: Yes, that is to say, when the property is in the possession of the son or the widow, it is *makkathayam* property. But if it has passed to the grandchildren, it loses the characteristics of *makkathayam* property. In such cases, only the law of partition relating to *tarwad* property can apply. Section 32, on the other hand, would seem to imply that, even in the hands of the grandchildren, it might take the character of *makkathayam* property. This, therefore, conflicts with the definition of *makkathayam* property under section 4. It is very doubtful that clause 32 would be applied by a court of law to property when it has descended from the hands of the original donees. That is one thing. Secondly, if this clause would apply in such cases, what is the kind of partition that should apply? Is it *per capita* or *per stirpes*? If it is *per stirpes*, so far as the groups are concerned, how are the properties to be divided?

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Each group might consist, as Mr. Narayana Pillai pointed out, of grandchildren, great-grandchildren and so forth. It appears to me that some other provisions also should be included in the clause so as to make it clear.

DEPUTY PRESIDENT: So your objection rests on the ground that something is to be added?

MR. K. PARAMESVARAN PILLAI: Yes. Therefore, I suggest that other provisions be introduced for the purpose of making the position clear and leaving no room for subsequent difficulties.

The House rose for lunch at 2-30 P. M.

The Council re-assembled after lunch at 3-17 P. M.

Clause 32.

DEPUTY PRESIDENT: Now, we are at the question that clause 32 as amended stand part of the bill. Mr. Parameswaran Pillai, you may continue.

MR. K. PARAMESVARAN PILLAI: My submission, therefore, is that some definite provision should be made, either in this clause or in addition to this clause, providing for the partition of these *makkathayam* properties when they descend to their grandchildren after the death of the donee's widow and children. What law should be applied to such properties is merely a question of policy. If the community is prepared to invest them with the characteristics of *marumakkathayam* property, then, of course, there is the provision for partition of *marumakkathayam* properties contained in clauses 28, 29 and 30. If, on the other hand, the community would deal with these properties even after they have descended to grandchildren and great-grandchildren as *makkathayam* properties, then that must be made clear in clause 32.

DEPUTY PRESIDENT: We cannot take evidence on that point.

MR. K. PARAMESVARAN PILLAI: I would suggest that they be treated as *makkathayam* property and dealt with as such.

DEPUTY PRESIDENT: Even after the death of the donees, until they are finally divided between the surving heirs?

MR. K. PARAMESVARAN PILLAI: Yes. That is my point.

DEPUTY PRESIDENT: So, you say you have no objection to that clause being accepted, provided another clause is inserted, under which the descendants of the donees will be allowed to divide these properties as if they were the donees themselves.

MR. K. PARAMESVARAN PILLAI: Yes. My object in objecting to this clause is merely to draw the attention of the House to this difficulty.

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[Mr. P. Paramesvaran.]

The motion that the clause as amended stand part of the bill was put to the vote and carried.

Clause 32 was added to the bill.

Clause 33.

DEPUTY PRESIDENT: Here there are the amendments of Mr. P. Paramesvaran. The first is as follows:

Add the following as clause 33:—

"*Elankams* and other places of worship and charitable institutions with the properties set apart for their maintenance, which are common to a *tarwad* and over which the *tarwad* has no power of disposal, shall continue to be the common property of the *tarwad* and shall be managed by a board of such members of the *tarwad* as may be elected by all the members together; and they shall be used, according to the opinion of the majority of the board, for the common good of the *tarwad*."

MR. P. PARAMESVARAN: ക്ഷേത്രം സംബന്ധിച്ചുള്ള ഭേദഗതി പിൻവലിച്ചിരിക്കുന്നു. ഇനി ഒന്നുണ്ട്.

The above amendment was accordingly not moved.

DEPUTY PRESIDENT: The next amendment of Mr. Paramesvaran is as follows:

"Notwithstanding anything in this Regulation, clauses 15 and 20 and the whole of part VII shall not apply to that portion of the Ezhava community who have been observing the *misradaya* system of inheritance".

MR. P. PARAMESVARAN: അതു പിൻവലിച്ചിട്ടില്ല.

DEPUTY PRESIDENT: ആ അമെൻഡുമെൻറിനെപ്പറ്റി പറഞ്ഞുകൊള്ളുക.

MR. P. PARAMESVARAN: മേൽ വിവരിച്ചതായ മാറ്റങ്ങളെ, അതായിതു ഞാൻ അഭിപ്രായപ്പെട്ട അമെൻറുമെൻഡുകളെ, ഈ മഹാസഭ അനുവദിക്കാത്തതിൽഎനിക്കും ഞാൻ പ്രതിനിധിയായിരിക്കുന്ന മിശ്രദായസമുദായത്തിനും വലുതായ മനസ്താപമുണ്ടു്. എന്നാൽ ഞാൻ അപേക്ഷിച്ച അമെൻറുമെൻഡുകാം മുഴുവനും എന്റെ സമുദായത്തിന്റെ ഉൽകഷ്ത്തിനും നിലനില്പിനും വലുതായ കാരണമായിരിക്കുമെന്നുള്ള അവസ്ഥയെ ഞങ്ങാംമേലും ഉറപ്പായി വിചാരിച്ചിരിക്കകൊണ്ടു ഞങ്ങളുടെ സമുദായത്തിനു നാശം വരുത്താവുന്നതായ ഈ ബില്ലിലെ വകുപ്പുകാം ഞങ്ങളെ ബാധിക്കാതിരിക്കത്തക്കവണ്ണം നിങ്ങളുടെ മുമ്പാകെ വീണ്ടും ഒരു അമെൻറുമെൻഡുകൂടി സമർപ്പിക്കുന്നു.

ഈ റെഗുലേഷണിൽ എന്തുതന്നെ അടങ്ങിയിരുന്നാലും ഇതിലെ ക.ടി-ാം വകുപ്പും വസ്തുവിഭാഗത്തെ സംബന്ധിച്ച ൈ-ാം ഭാഗവും ചേരു

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തന്നെ മിശ്രദായം അനുഭവിച്ചുവരുന്ന ഈഴവസമുദായത്തെ സംബന്ധിക്കുന്നതല്ല.

ഇതിനെ സമ്പൂർണ്ണമായി ചേർക്കണം എന്നാകുന്നു എന്റെ അഭിപ്രായം.

ഇതിനെ സംബന്ധിച്ച് എനിക്ക് അധികം പ്രസ്താവിക്കാനില്ല.

ഈ റെഗുലേഷണിലെ വ്യവസ്ഥകളെക്കുറിച്ചും പുതുതായി അവതരിപ്പിച്ച നായർ ബില്ലിനെപ്പറ്റിയും ഈ സഭയിൽ കഴിഞ്ഞദിവസം നടന്നതായ വാദങ്ങളിൽ മാന്യമെമ്പറന്മാർ ഇവയിൽ അടങ്ങിയിരിക്കുന്ന നീതിതത്വങ്ങളുടെ ഗുണദോഷങ്ങളെ വെളിവാക്കീട്ടുണ്ട്. അവയിൽ അടങ്ങിയ അതിപ്രധാനമായ സംഗതികളെ മാത്രം സംക്ഷേപമായി പ്രസ്താവിക്കാം.

ഈഴവബില്ലിൽ ഒരു പ്രത്യേക സമുദായത്തെമാത്രം സംബന്ധിക്കുന്ന നിയമം ആണ്. സാമുദായികമായ യാതൊരു നിയമവും നടപ്പാക്കുന്നതിൽ ആ നിയമത്താൽ ബാധിക്കപ്പെടുന്ന ജനങ്ങളുടെ ഭൂരിപക്ഷത്തെ മാത്രം ശ്രദ്ധിച്ചാൽ പോരാ. അല്പപക്ഷക്കാരുടെ മനോഭാവങ്ങളേയും അഭിലാഷങ്ങളേയും ആശയങ്ങളേയുംകൂടി നല്ലപോലെ ആദരിച്ചുവേണ്ടതാകുന്നു.

ഒരു തരത്തിലുള്ള നിയമം തങ്ങൾക്കു ദോഷകരമാണെന്ന് സ്വല്പപക്ഷക്കാർ തന്നെയും നിർബന്ധമായ് മനഃപൂർവ്വം അറിയിക്കുമ്പോൾ, ആ അറിയിപ്പിനെ നിയമകർത്താക്കൾ വളരെ വിലവെച്ച് ആദരിക്കാൻ കടപ്പെട്ടിരിക്കുന്നു.

അതിനെ ഒരിക്കലും വിഗണിക്കയോ ദൂരീകരിക്കയോ ചെയ്യാൻ നിയമകർത്താക്കൾക്ക് അധികാരം ഇല്ല.

നിയമശാസ്ത്രത്തിന്റെ മൂലതത്വം ഇതാണെന്നു പ്രൊഫസർ രംഗസ്വാമിഅയ്യങ്കാർ മുതൽപേർ ഈ സഭയിൽ സയുക്തികമായും ന്യായമായും അറിയിച്ചതാണ്.

മിശ്രദായക്കാരാകട്ടെ കൊല്ലം മുതൽക്കു തെക്കുള്ള പത്തു താലൂക്കുകളിൽ പാർക്കുന്ന ഈഴവ സമുദായമാണ്. അവരിൽ ധനസ്ഥിതികൊണ്ടും, പുരാതനത്വംകൊണ്ടും, നിലകൊണ്ടും, വിദ്യകൊണ്ടും സർവ്വമാന്യങ്ങളായി അനേകം കുടുംബങ്ങൾ ഉണ്ട്. ഗവർൺമെൻറിൽനിന്ന് ഉണ്ടാകീട്ടുള്ള ചട്ടപ്രകാരം ഈ കൃപാകരം ഒടുക്കുന്നവക്കെല്ലാം ഒരുവിധം നിലനല്കീട്ടുണ്ട്. ആ നിലയുള്ളവരിൽ വോട്ടധികാരം ഉള്ളവർ ഓരോ വർഷവും പേരുള്ളതിൽ മരിച്ചുവരും ഹാജരില്ലാത്തവരും പോകെ ഏതാൻ പേർ വായിച്ചുനോക്കി ഒപ്പിട്ടയച്ചതായ ഹാജികളിൽ വ്യക്തമായി ആവശ്യപ്പെ

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ട്ടിരിക്കുന്നത് ഈ ബില്ലിൽനിന്നും അവരെ ഒഴിക്കണം എന്നാകുന്നു. ഈ ഹർജിയും ഫസ്റ്റ് ജനങ്ങളുടെ ഒപ്പുകളും സത്യംതന്നെയൊ എന്നു സംശയിക്കുന്നതായി ഒരു മാന്യസഹോദരൻ തുറന്നു വെളിവാക്കി പറഞ്ഞതിനെപ്പറ്റി എനിക്ക് കുണ്ഠിതം തീരെ ഇല്ല. എന്തുകൊണ്ടെന്നാൽ ഈ ബിൽ സംബന്ധമായി അദ്ദേഹം ചെയ്ത പ്രവൃത്തികൾ ഓരോന്നും മിശ്രദായ ഈഴവ സമുദായത്തിന് ചതിപറ്റിക്കുന്നതും ഗവർൺമെന്റിനെ തെറ്റിദ്ധരിപ്പിക്കുന്നതും ആയുള്ളതാണെന്ന് എനിക്കും മിശ്രദായസമുദായത്തിൽ ചേർന്നു കൊള്ളാവുന്നവരായ ഓരോരുത്തർക്കും ബോധ്യംവന്നിട്ടുള്ള വിഷയമാണ്. അതിരിക്കട്ടെ.

ഈ പത്തു താലൂക്കുകളിലും ഉള്ളവർ ഈ റെഫറേഷണിൽനിന്നു തങ്ങളെ ഒഴിച്ചുകിട്ടണമെന്ന് അപേക്ഷിച്ചിരിക്കയേ, ഈ അപേക്ഷയെപ്പറ്റി, എന്റെ മാന്യസഹോദരങ്ങളെ, നിങ്ങൾ ഓരോരുത്തരും സൌഹാർദ്ദത്തോടുകൂടി നിഷ്പക്ഷപാതമായി ആലോചിക്കണേ.

ഇവരുടെ അപേക്ഷയ്ക്കു—മിശ്രദായക്കാരിൽ ഫസ്റ്റ് വർഗ്ഗത്തിൽ അധികവും പേർ ചേർന്ന മഹാജനങ്ങളുടെ അപേക്ഷയ്ക്കു—വിപരീതമായും അതിനെ ദൂരത്തു തള്ളിയും ഒരു നിയമം ഉണ്ടാക്കി ആ സമുദായത്തിന്റെ തലയിൽ നിർബന്ധമായി കെട്ടിവയ്ക്കുവാൻ നിങ്ങൾ തുനിയരുതെന്നു വീണ്ടും അപേക്ഷിക്കുന്നു. എന്നാൽ ഒരുവിധം നിയമം ശുപിപ്പിച്ചുവന്നിരിക്കെ മനസ്സില്ലാത്ത ഞങ്ങളെ അതിൽനിന്നു വിടുത്തണം എന്ന് അപേക്ഷിക്കുന്നതു ന്യായമാണോ എന്നു ചിന്തിക്കാം.

ഈ നിയമത്തിന് ഈഴവനിയമം എന്ന പേർ. ഈഴവരിൽ മൂന്നു പ്രധാനഭാഗങ്ങൾ ഉണ്ട്. (ക) മക്കത്തായികൾ. (ഖ) മരുമക്കത്തായികൾ. (ഗ) മിശ്രദായക്കാർ. ഇവരിൽ മക്കത്തായക്കാരെ നിയമത്തിന്റെ വ്യവസ്ഥയിൽ നിന്നും ഗവർൺമെന്റു തന്നെ ഒഴിച്ചിരിക്കുന്നു. അതുകൊണ്ട് ഈ ബിൽ സകലവിധ ഈഴവർക്കും സംബന്ധിക്കുന്നതല്ല എന്നു വെളിവായി. മറുരണ്ടു തരം സമുദായത്തിനും സംബന്ധിപ്പിക്കണമെന്ന് ഇപ്പോൾ നിങ്ങൾ നിശ്ചയിച്ചിരിക്കുന്നതിൽ ചില ഭാഗങ്ങളിൽനിന്നും ഞങ്ങളെ ഒഴിക്കണമെന്നു വാദിക്കാൻ ഞങ്ങൾക്കു പൂർണ്ണമായ അവകാശവും അധികാരവും ഉണ്ട്. ആ അവകാശത്തെയും എന്റെ സമുദായത്തിന്റെ അഭിലാഷത്തെയും നല്ലപോലെ ആദരിച്ചു ഞങ്ങളുടെ അപേക്ഷയെ നൽകേണ്ടതു ഓരോ മന്യമെമ്പരുടെയും കടമയുമാകുന്നു. സകല ശകരളീയരാലും ബഹുമാനിക്കപ്പെട്ടവരുന്ന സർ. ശങ്കരൻനായ അവർകൾ നായർ സമുദായത്തിന്റെ ഗുണത്തെ മുൻനിർത്തി അവരുടെ

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വിവാഹത്തിനു സാധുതയെ ജനിപ്പിക്കാനായി ഒരു നിയമം മദ്രാസ്സം സ്ഥാനത്തിൽ നടപ്പാക്കി. അതിലേയ്ക്കു നായർസമുദായത്തിനു ബല വത്തായ വിരോധം ഉണ്ടായിരുന്നതിനാൽ മനസ്സുള്ളവർ അതനുസരിച്ചു നടന്നാൽ മതി എന്നുള്ള തത്വത്തെയാണ് അദ്ദേഹം അനുസരിക്കാൻ ഇടയായത്.

ഒരു സമുദായത്തെ മുഴുവനേയും നിബന്ധിച്ചു അനുസരിപ്പിക്കുന്നതു നീതികേടാണെന്നു മദ്രാസ് ഗവർൺമെൻറു നിശ്ചയിക്കയാൽ അദ്ദേഹത്തിൻെറ നിയമത്തിനു നാമമായിട്ടെങ്കിലും അനുമതി കിട്ടി. മറെറാരു നിയമത്തിൻെറ കഥ പ്രൊഫസർ രംഗസ്വാമി അയ്യങ്കാരും രാജശ്രീ കൃഷ്ണയ്യങ്കാരവർകളും നിങ്ങളെ വിശദമായി കേൾപ്പിച്ചിട്ടുണ്ട് "ഗെയിൻസ് ആഫ് ലെർണിംഗ് ബിൽ" എന്നൊരു പുതിയനിയമം പരേതനായ സർ. ഭാഷ്യം അയ്യങ്കാർ മദ്രാസ് കൌൺസിലിൽ അവതരിപ്പിച്ചു. അദ്ദേഹത്തെ പോലെയുള്ള വലിയ വലിയ ബുദ്ധിമാന്മാരെല്ലാം അതു വളരെ ന്യായമായ നിയമമാണെന്നു കണ്ടു മദ്രാസ് നിയമസഭ അനുവദിച്ചു. എന്നാൽ ബഹുജനങ്ങൾക്ക് അതു പക്ഷമല്ലായിരുന്നു. അതുകൊണ്ടു മദ്രാസ്നിയമസഭ അനുവദിച്ചതായ ആ ബില്ലിനു ബഹുമാനപ്പെട്ട വൈസ്രായി അവർകാം അനുവാദം കൊടുത്തില്ല. ബഹുജനങ്ങളുടെ മനോഭാവത്തേയും അഭിലാഷത്തേയും ഇതു വിധം ബഹുമാനിച്ചുവരുന്ന ബ്രിട്ടീഷ് ഗവർൺമെൻറിൻെറ ശ്ലാഘ്യമായ നീതിയെ എൻെറ മാന്യസഹോദരങ്ങളെ നിങ്ങളും അനുകരിപ്പിൻ.

ദായക്രമമാകട്ടെ ഓരോ സമുദായത്തിലും ഓരോ വിധമായിരിക്കുന്നു. മിതാക്ഷരപ്രകാരം പെൺകുട്ടികൾക്കു വസ്തു അവകാശമില്ല. പുത്രന്മാക്കുമാത്രമെ അവകാശമുള്ളു. ഇംഗ്ലീഷുകാരും മക്കത്തായികളാണ്. ആ മക്കത്തായചട്ടപ്രകാരം എല്ലാ പുത്രന്മാക്കും വസ്തു അവകാശമില്ല. മൂത്ത പുത്രനുമാത്രമെ വസ്തു അവകാശമുള്ളു. മലയാള ബ്രാഹ്മണരുടെ ഇടയിൽ മൂത്ത പുത്രനു മാത്രമേ വിവാഹം ചെയ്യാവൂ. മക്കത്തായത്തിൽ തന്നെയും ഈ വിധം ഭിന്നരീതികൾ ഉണ്ടായിരിക്കവേ എല്ലാ മക്കത്തായക്കാരും ഓരേ രീതി അനുസരിക്കണം എന്നു വല്ല ഗവർൺമെൻറും നിബന്ധിച്ചിട്ടുണ്ടോ? യാതൊരു പരിഷ്കൃത ഗവർൺമെൻറും അങ്ങനെ നിബന്ധിക്കയില്ല.

ലോകത്തിലുള്ള ദായക്രമത്തിൽ വച്ചു് എല്ലാവക്കും ആദർശമായതു മഹമ്മദരുടെ ദായക്രമമാകുന്നു. അതിൻപടി ഒരുവൻെറ വസ്തുവിനു് അവകാശമായി രക്തബന്ധമുള്ള സകലർക്കും അവകാശമുണ്ടു്.

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[Mr. P. Paramesvaran.]

ഇതു് ആദർശമായ രീതി ആകയാൽ എല്ലാ ക്രിസ്ത്യാനികളും ഹിന്ദുക്കളും ഈ ദായരീതി സ്വീകരിക്കണമെന്നു വല്ലവരും നിർബന്ധിച്ചിട്ടുണ്ടോ? നിർബന്ധിച്ചാൽ തന്നെയും അവർ സമ്മതിക്കുമോ? മിശ്രദായക്കാർ തങ്ങളുടെ പൂർവ്വനിയമം മാത്രം മതിയെന്നും പരിഷ്കൃതരീതിയാണെന്നു പറയുന്ന ഈ പുതിയ നിയമം വേണ്ടായെന്നും ക്ലബ്ബ് ക്ലബ്ബായി മുറവിളി കൂട്ടീട്ടും അതിനെ നിങ്ങൾ കേൾക്കുകയില്ല എന്നു വരികിൽ അന്യായമായി ഒരുകൂട്ടം ജനങ്ങളെ ദോഷപ്പെടുത്തുന്നതായ അപരാധം ജനിക്കുന്നതാകുന്നു. മഹമ്മദരുടെ ആദർശമായ ദായരീതി ഏതുവിധം ബന്ധുക്കൾക്കു ഗുണകരമായിരിക്കുന്നുവോ ആ വിധം ഗുണകരമായിട്ടുള്ളതാകുന്നു മിശ്രദായരീതി. ഈ രീതിതന്നെ ഞങ്ങൾക്കു വേണമെന്നുള്ള നിർബന്ധത്തിൽ മിശ്രദായക്കാരിൽ തന്നെയും വളരെ ചുരുക്കം എണ്ണമുള്ള ചിലക്കു് അഭിപ്രായവ്യത്യാസം ഇരിക്കാം. എന്നാൽ ഞാൻ മുൻപു പ്രസ്താവിച്ചതുപോലെ നൂറിൽ എൺപതിലധികം പുരുഷന്മാക്കും, നൂറിൽ തൊണ്ണൂറിലധികം സ്ത്രീകൾക്കും മിശ്രദായം തന്നെയാണു വേണ്ടതു്.

സഭയ്ക്കു് എന്റെ ഈ വാദത്തെ പറ്റി ഇനിയും സംശയം ഉണ്ടായിരുന്നാൽ ജനങ്ങളെ വരുത്തി ചോദിക്കുവിൻ; ഓരോ തഹശീൽദാക്കും എഴുതി അയച്ചാൽ അവരെല്ലാവരും തഹശീൽദാരുടെ മുമ്പാകെ ഹാജരായി മൊഴി കൊടുക്കും.

ഇപ്പോൾ ആവശ്യപ്പെട്ടിരിക്കുന്ന ഭേദഗതികൾ കൂടിയേതീരൂ എന്നും ഞങ്ങളുടെ ഭാവിശ്രേയസ്സിനു വേണ്ട കാര്യങ്ങൾ അറിഞ്ഞു ചെയ്യേണ്ടതു് ഞങ്ങളല്ല എന്നും അന്യന്മാർതന്നെയെന്നു് വിചാരിക്കുന്നതു ന്യായമാണെന്നും വരികയാണെങ്കിൽ ഞങ്ങളെ ഇതിൽനിന്നു വിട്ടൊഴിക്കേണ്ടതാണെന്നുള്ള ഈ വാദം അതിലുമധികം ന്യായമായിട്ടുള്ളതാണ്.

ഒരുവന്റെ സ്വാർജ്ജിതത്തിൽ നേരുപകുതിക്കു ജന്മസിദ്ധമായ അവകാശം അവന്റെ അനന്തരവക്കു് ഉണ്ടു് എന്നും ആ വിധം അവകാശത്തെ ഞങ്ങൾ അനേകം ശതം കൊല്ലങ്ങളായി അനുഭവിച്ചു വരുന്നു എന്നും ഞങ്ങളുടെ കൂട്ടത്തിൽ ചേർന്നവരാണെന്നു ഭാവിക്കുന്ന മാന്യരായ ഈ സഭയിലുള്ള രണ്ടു് ഈഴവസഹോദരർപോലും സമ്മതിക്കുന്നുണ്ടു്. ഞങ്ങളുടെ വലിയതമ്പുരാൻ തിരുമനസ്സുകൊണ്ടും ഗവർൺമെൻറു്, റിക്കാട്ടുകളും, ജഡ്ജ്മെൻറുകളും ഇപ്രകാരം സമ്മതിച്ചിരിക്കുന്നു. ഇപ്പോൾ അനുവദിച്ചിരിക്കുന്ന പതിനഞ്ചാംവക്കുപ്പു അനന്തരവക്കുള്ള ജന്മസിദ്ധമായ ഈ അവകാശത്തെ മുഴുവടോടെ നശിപ്പിച്ചിരിക്കുന്നു. എന്നു തന്നെയുമല്ല,

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മക്കൾക്കു പൂർണ്ണാവകാശം കൊടുക്കണമെന്നുള്ള വിചാരത്തെ തടസ്സ
യും ഒരുത്തന് ഇല്ലാതാക്കാവുന്ന വിധത്തിൽ ഫ-ാംവകുപ്പ് ഈ സഭ
അനുവദിച്ചിരിക്കുന്നു.

ഈ സ്ഥിതിക്ക് ഫ-ാംവകുപ്പും വസ്തുവിഭാഗത്തെപ്പറ്റിയുള്ള
ൈ-ാംഭാഗവും മിശ്രദായക്കാർക്കു സംബന്ധിക്കുന്നതല്ല എന്നുള്ള ക്ലൂടതൽ
വകുപ്പിനെ അനുവദിക്കുന്നതിനു നിങ്ങൾ ഓരോരുത്തരും അനുകൂലിക്കും
എന്നു ഞാൻ സർവ്വാത്മനാ വിശ്വസിക്കുന്നു. ഇങ്ങനെ അനുവദിക്കുന്ന
തായാൽ മാത്രമേ തിരുമനസ്സിലെ സാധുക്കളായ ഒരു പ്രജാവിഭാഗത്തിനു
മനഃക്ലേശം ഇല്ലാത്തവിധം ഈ സഭ നിയമം ഉണ്ടാക്കി എന്നുള്ള സന്തോ
ഷം വഹിയ്ക്കുന്ന തമ്പുരാൻ തിരുമനസ്സിലെ ഗവർൺമെൻറിനു ജനിക്കാൻ
ഇടയാകുകയുള്ളൂ.

ഞങ്ങളുടെ ദായക്രമം മാറിക്കൂടാ എന്നുള്ളതിന് ഒരു വലുതായ
കാരണം കൂടി പറയാം. ഞങ്ങൾ അറിയുന്നു. ഹിന്ദുമതാചാരപ്രകാരം
വിവാഹം, അശൌചം, ശ്രാദ്ധം മുതലായി സകലതും ഞങ്ങൾ ആചരി
ക്കാൻ കടപ്പെട്ടിരിക്കുന്നു. അങ്ങനെ ആചരിച്ചേതീരൂ എന്നും അല്ലെ
കിൽ ദ്രോഷ്ടം ഉണ്ടെന്നും, മുതലവകാശം ലഭിക്കയില്ലെന്നും പണ്ടുപണ്ടേ
നിർബന്ധമുള്ളതാണ്. മുതലവകാശം ജനിക്കുന്നതു ശ്രാദ്ധം മുതലായ
പിതൃകർമ്മങ്ങൾചെയ്യുന്നതിനുള്ള അധികാരത്തെ അവലംബിച്ചാണ്.

ബ്രാഹ്മണർ മുതലായവർക്ക് ആൺമക്കൾ മാത്രമേ ശവദാഹാദിയും
ശ്രാദ്ധവും നടത്തുന്നുള്ളൂ. കേവലം മരുമക്കത്തായക്കാരിൽ ശേഷക്കാരൻ
മാത്രമെ ശ്രാദ്ധം നടത്തുകയുള്ളൂ. മക്കൾ നടത്തുകയില്ല.

മിശ്രദായക്കാരായ ഞങ്ങളുടെ ഇടയിൽ അച്ഛനു, മക്കളും ശേഷക്കാ
രും രണ്ടു കൂട്ടരും ഒന്നിച്ചു ചേർന്നിരുന്നു ശ്രാദ്ധം നടത്തണം. ഇതാണ്
ആചാരം. ഇങ്ങനെ ഇരുകൂട്ടക്കാരും ചേർന്നിരുന്നു ശ്രാദ്ധം നടത്തിയാൽ
മാത്രമെ പിതൃക്കൾക്കും ഞങ്ങൾക്കും ഗതിയും കുടുംബരക്ഷയും ഉണ്ടാവുക
യുള്ളൂ. ഇതാണ് ഞങ്ങളുടെ വിശ്വാസം.

Mr. K. P. RAMAN PILLAI: ഇതു ഏതു ശാസ്ത്രം അനുസരിച്ചാണ്?

MR. P. PARAMESVARAN: ഇതു ഞങ്ങളുടെആചാരവും വിശ്വാസ
വുംആണ്. എല്ലാവരും ആചരിക്കേണ്ടതും ആചരിച്ചുവരുന്നതും ആണ്.
ശാസ്ത്രപ്രമാണം ഇവിടെ ആവശ്യമില്ല. ഇതിനെ പരിഷ്കാരികളായ
ഈ സഭയിലെ രണ്ടു മാന്യസോദരന്മാരും അനുകരിച്ചുവരുന്നു. എന്റെഅ
മ്മാവന്റേയും അച്ഛന്റേയും ശ്രാദ്ധാദികർമം എന്റെ സഹോദരന്മാരായ
ഡാക്ടർ പല്പു മുതലായവരും മേൽവിവരിച്ച വിധംതന്നെ രാമേശ്വരത്തു

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[Mr. A. Hoogewerf]

പോയി യഥാവിധി നടത്തിയിരിക്കുന്നു. മതാചാരത്തിനു വിരുദ്ധമായി യാതൊന്നും പ്രവൃത്തിക്കരുത് എന്നാകുന്നു ഞങ്ങളുടെ ബോധം. ഈ നിലയ്ക്കു മിശ്രദായക്രമം അല്ലാതെ മറെറാന്നും ഞങ്ങളുടെ സമുദായം അംഗീകരിക്കുകയില്ല. ഇതു സംബന്ധമായി ഈ സഭയിൽ മറെറാരവസരത്തിൽ ഉണ്ടായ വാദങ്ങളും ഞങ്ങളും കേട്ടുണ്ടായിരിക്കുന്ന സ്ഥിതിക്ക് ഇതധികം ഞാൻ പ്രസ്താവിക്കുന്നില്ല. ഈ നിലയ്ക്കും മിശ്രദായക്കാരെ ഈ നിയമത്തിൽ നിന്ന് ഒഴിവാക്കേണ്ടത് ഈ സഭയുടെ കടമയാകുന്നു.

ഇതിൽ ഒരു ഭേദഗതിക്ക് അവകാശമുണ്ട്. അതിനു പരിഹാരവും ഞാൻ അറിയിക്കാം. മാന്യസഭാഗങ്ങളായ മിസ്റ്റർ ഗോവിന്ദനും മിസ്റ്റർ കുമാരനും മിശ്രദായകുടുംബങ്ങളിൽ ജനിച്ചവരാണ്. മിശ്രദായക്കാരെ ഒഴിക്കുന്നതിൽ അവർക്കു മനസ്സില്ലേ? അവരുടെ കുട്ടികൾക്ക് അതിനു മനസ്സില്ലായെന്നിരിക്കെ അവർ ആ ഒഴിക്കലിനെ അനുസരിച്ചേതീരൂ എന്നു നിർബന്ധിക്കുമോ എന്നു ഭയം ജനിക്കാം. അങ്ങനെ നിർബന്ധിക്കേണ്ട. അവർക്ക് ഒഴിക്കുന്നതിൽ ഭേദമാൻ മനസ്സില്ലെങ്കിൽ ഈ പുതിയ നടപ്പാംവകുപ്പ് അവരെ സംബന്ധിക്കാത്തവിധം ഒരു ക്ലിപ്തം കൂടി ഇതിൽ ചേർക്കുന്നതിൽ എനിക്കു വിരോധമില്ല.

Mr. A. HOOGEWERF: Mr. Parameswaran wants the *misradaym* community to be exempted. I understand there are three *misradayam* Ezhava members here, of whom two do not want any such exemption. Outside the House also, the majority of *misradayees* are for the provisions embodied in the bill, that majority including the best brains of the community at the head of which stands the *Guru* himself. As such, the exemption of *misradayees* will have the effect of imposing the will of the backward minority on the enlightened majority. The minority who complain of the tyranny of the majority cannot, with any grace, seek to tyrannise the majority itself. It does not well lie in their mouths to seek to do so.

The division of the community into two water-tight compartments by legislation would damage the solidarity of the Ezhava community and will be undoubtedly prejudicial to its harmonious growth.

Professor Rangaswami Aiyangar's amendment for exempting *misradayees* who do not want to be governed by the new law of succession was discussed at great length in the House, and the House vetoed the amendment by a very large majority. That was a partial exemption. Now Mr. Parameswaran wants to go the whole hog and is for complete exemption, whether the *misradayee* wants it or not. I have serious doubts as to whether we shall be in order even to consider such a proposal. Mr. Parameswaran's propositions from the beginning were reactionary and retrograde. His was a deliberate attempt to stem the tide of social

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progress and stifle religious liberty, and this House rejected all his propositions one after another. One of the propositions was voted against by himself. Another very important clause—clause 15 relating to inheritance—from the operation of which he now wants exemption, has been sought to be amended by him with his half-and-half devolution. The fate of that amendment is, I am sure, fresh in our memory, it having secured but one vote, besides the halting vote of the mover himself. This exemption clause, the last and unkindest cut of all, reminds us of the drowning man and the straw. For these reasons, I vehemently oppose the proposed clause

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: The House has already been good enough to give me an opportunity on an earlier occasion to explain my position in regard to the demands of that section of the *misravazhi* community which wants that it should not be brought within this bill. It is not necessary for me to traverse again the same ground on this occasion. I merely want now to place one or two points before the Council to show why I find it difficult to accept Mr. Paramesvaran's present amendment. Mr. Hoogewerf, who has just spoken, was good enough to couple my amendment to clause 15 with Mr. Paramesvaran's present amendment. If he would permit me to make a correction, I should like him to know that my amendment was only to clause 15 and not to clauses 15 and 20, and that my amendment was also somewhat different from the present amendment. My objection against Mr. Paramesvaran's amendment is—

MR. A. HOOGEWERF: I said so. It is only partial.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: There is a great difference between my position and Mr. Paramesvaran's amendment. Mr. Paramesvaran's amendment might be suffering at the present time—as he complained or some gentlemen who moved some propositions which have been translated complained—from translation. Whatever it be, in the form in which we find it, Mr. Paramesvaran's amendment, if it is accepted, will deny to such members of the *misravazhi* community, as have been born in the *misravazhi* community but have been converted to recognising the benefits of some of those provisions which are contained in the bill, any chance of getting the benefit of this measure. I do not think it is right that Mr. Paramevaran should ask for exemption for any but those of the *misravazhi* community who do not want the provisions to be applied to them. It seems to me that, whether the section of the *misravazhi* community which wants to follow the customs of its ancestors forms the majority or the minority of that community, it has no right to ask that its views should be imposed upon every one who has been born in that community. We have been reminded, in the course of the discussion, that there are at present two members of the *misravazhi* community in this House itself, who, though born in that community, do not now share Mr. Paramesvaran's opinion. I do not think that this House will be justified, at any rate, I do not think I would be justified, consistently with the position I took up earlier,—in allowing the

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[Mr. P. K. Narayana Pillai.]

provision suggested by Mr Paramesvaran to be applied to the 'forward' members of the *misravazhi* community, when I had pleaded on a previous occasion for sympathy for those members of the *misravazhi* community who do not want to move along with their brethren of the 'forward' side. Mr. Hoogewerf, in the course of his recent remarks, was good enough to say that, if this amendment of Mr. Paramesvaran is accepted, it will be a case of a minority coercing the majority. If I might only do so, I would, on the strength of the figures supplied by the learned Additional Head Sirkar Vakil on the last occasion, beg leave to correct Mr. Hoogewerf in regard to his implication as to which section constitutes the minority. Those figures represent, be it noted, only the trend of opinion at the time when the Law Committee took evidence; and since then it is possible that a large number of people have changed their opinion. At that time, undoubtedly, the members of the *misravazhi* community, who do not want the measure propounded in this bill, formed the majority. I do not know whether they constitute the majority now.

MR. M. GOVINDAN: No.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: It is a question of inference. I have met during the past few days some *misravazhi* people gathered together in the college compound. They are against this bill. Some of them have gone so far as to represent their opinion to this Council through petitions. That is the type of opinion which claims to represent four-fifths of the community on this question. Till some authoritative inquest is made, I am not prepared to commit myself to any opinion, as to whether they are of the majority or not. It is also unimportant to me whether the majority is indifferent to this proposed legislation or not. I understand that Mr. Govindan himself was on a previous occasion willing to give some more latitude, some more freedom, to the opinion of this majority or minority. To me, the majority and the minority are equally entitled to tolerance and any honest difference of opinion in regard to traditional social usages or the lines of progress. Under these conditions, I regret that I must oppose Mr. Paramesvaran's motion on this occasion, because it seems to me that it is inconsistent with the very same principle to which he referred with a certain amount of appreciation in the course of his speech. I do so with less reluctance, because I feel that, if Mr. Paramesvaran's motion is withdrawn or put out of the way, it might be possible to put forward some solution of the question, which might enable the legitimate demands of that section which does not want to be brought within this bill to be met, and which at the same time might put those who want to get the advantage of progress in a position to obtain the benefit of what they have been earnestly working for. On this ground, Mr. President, I oppose the amendment of Mr. Paramesvaran.

MR. P. K. NARAYANA PILLAI: Sir, in the matter of this motion, I see that Mr. Paramesvaran is struggling not only against

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reason, but also against himself. No doubt, he can justify his position as perfectly logical in view of the course adopted by this House in discussing some other provisions of the bill. It is still within the recollection of this House that, when the motion relating to a provision for individual partition was under discussion, members on the official side as well as some on the non-official side said that, though there were a number of people who wanted individual partition, they should be kept outside the pale of the bill and that no provision should be made in it to meet their legitimate aspiration. Now, if you will not allow people to step in, why do you object to people getting out? In other words, if it is your pleasure to deny the benefits of legislation to some people, why do you not add to your pleasure by releasing from legislative embarrassment people who think they will do well without it? That is the logic that our friend Mr. Parameswaran wants us to recognise and give effect to. So far, Mr. Parameswaran's position seems to be quite unassailable. But, judged from his own standpoint, he will appear somewhat unreasonable. In opposing the motion for individual partition, he, with others, wanted their will to prevail against the will of those who demanded individual partition. Now, when he comes to his own hardship, he is not prepared to submit himself to the will of others. While enunciating the principle that no one should impose his will on another, Mr. Parameswaran claims a certain convenient exemption from it to the advantage of himself and his followers. In view of the division in the camp of *misravazhi* followers, how he can regard himself as the mouth-piece of the entire group is also not clear. In the matter of individual partition, he was opposed to a section, at any rate, of the *misravazhi* people. Now he wants to be viewed as their representative. He has thus worked himself into an irreconcilable position; and however acceptable it may appear to the House, I find it quite hopeless to support him. Hence, I oppose the amendment of Mr. Parameswaran.

Mr. T. K. VELU PILLAI: The obstacles in the way of a satisfactory solution of this question are due to exaggerated hopes and exaggerated fears. A good many members of the *misravazhi* community seem to entertain the idea that, if they only persist in a certain course, that course would eventually be adopted by the Council; and the exaggerated fears consist in certain members of the community thinking that if this law is passed in the present form that will affect the prestige and future progress of the community. I am sorry I cannot share either the hopes or the fears of the community. That the community wants to go forward is admitted on all hands. But I find in a letter that has been circulated with the signature of Mr. Parameswaran the following:

"If, in spite of what is stated above, the idea is to introduce modification, it should be done only by slowly letting it down and not dropping it from a precipice; the change, it will be noticed, is revolutionary and the element of deliberate intention is introduced as a condition necessary if the nephew, who used to inherit the property all these years, should continue to do so. It should be the other way, *i. e.*, the deliberate intention should be used if the children should take. As it is, there is no prohibition in the bill for an Ezhava to deprive his children, if he pleases, of the entirety of his property by willing it away to his nephews. Under the existing law, the *misradayee* Ezhava cannot do that,

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[Mr. V. Subba Aiyar].

It cannot be that the framers of the bill intended to place the children in a worse position than they are at present."

This shows the extent to which retrograde ideas might travel. Whatever may be my views on the question of exempting the *misravazhi* community from the operation of the bill which they dislike, I cannot for one moment accept the proposition that hereafter the *misradayee* cannot have the freedom to do what he likes with his property. So that when objections are raised against that freedom, I am constrained to observe that this movement is a retrograde one. The next paragraph in Mr. Paramesvaran's letter appears to me to be a more reasonable one. He says:

"Lastly, if, for the only reason that, by a majority of the legislators who in no way are affected by this particular legislation, it has been voted for [note that it is not yet the law as it awaits the final reading as well as Royal sanction], it be held that it will not be reconsidered, it is prayed that such of us as want to be outside the scope of the bill may be permitted to do so; only it has to be confessed that is a very uncouth impracticable method."

Sir, if some members of the *misravazhi* community press their claims upon the attention of this Council praying that they may be exempted from the operation of a particular clause of this bill, which they disapprove of, nothing will be more reasonable for this Council than to allow them to do so. If, instead of bringing in this amendment in its present difficult form, Mr. Paramesvaran had thought it proper to bring forward an amendment to the effect that particular families or particular individuals that want the benefit of the *misravazhi* law should be allowed to do so, I, for one, would have been very happy to support it. We have heard a good deal about the rights of the majority and the minority. That the minority has got a right is a proposition which requires very little proof at present. But if the amendment is accepted, we are led to a difficult situation whereby a large number of the members of the *misravazhi* community will have to be denied a right which they wish to have. I am sorry to observe that the amendment has been so unhappily worded. If Mr. Paramesvaran wants to serve his constituency and if he wants to satisfy his own conscience, then he may bring in an amendment to the effect that those people who find it impossible to remain under the present law should seek exemption. If this is done, I think the House will accept it. Therefore, in all earnestness and seriousness, I advise Mr. Paramesvaran to accept that position.

MR. V. SUBBA AIYAR: Sir, so far as the bill under consideration is concerned, it is proposed to apply it to the *misravazhi* Ezhavas, and to *marumakkathayee* Ezhavas, and it also enables the Government to extend its provisions to some other sections. What Mr. Paramesvaran wants is that the *misravazhi* people, as a whole, should be exempted from the operation of this bill. The question is what to do for the *misravazhi* people who want to be governed by the bill.

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MR. P. PARAMESVARAN: മക്കത്തായം വേണമെന്നുള്ളവർ ബില്ലിൽ ചേരുന്നതിൽ എനിക്ക് വിരോധമില്ല.

MR. V. SUBBA AIYAR: I do not know whether his amendment goes so far. According to his amendment, the *misravazhi* community should be exempted. Probably, what he wants by it is that, in the first instance, this law should exempt the *misravazhi* section and if any section of that community wants to be regulated by the provisions of this law, they may apply to Government or adopt any other procedure that may be prescribed and get themselves into the regulation.

MR. N. KUMARAN: Is there any such provision in the amendment we are discussing? I suppose not.

MR. V. SUBBA AIYAR: As it stands, the amendment does not mean that. Evidently, that is the suggestion he has got in view, although it has not been put into writing. As it is, certainly the amendment is out of the question, because the amendment wants the exemption of the whole *misravazhi* community. I shall admit for argument's sake his contention that the *misravazhi* people who want to be governed by the bill are only a minority. Even then, the amendment wants that the minority should not be governed by this bill. Evidently, his intention is that those who want to be excluded from the bill may be allowed to seek exemption. If so, we must not stand on very high technicalities. If this amendment is out of order, probably he may be prepared to amend it.

DEPUTY PRESIDENT: It is not out of order as it stands.

MR. V. SUBBA AIYAR: What he wants is that the regulation should not apply to a particular community but that it may be applied if they apply for it. There is no doubt that, so far as social legislation is concerned, as Mr. T. K. Velu Pillai pointed out, if anybody wants to coerce the minority, the legislature should take care to see that the minority, which wants to be exempted from the operation of the measure, is given ample opportunity to do so. Beyond that, it should not be said that the regulation should not be applied. The question is whether it is reasonable to suppose that the whole community should be exempted, and that the particular *tarwads* should be asked to apply for the provisions being extended to them, or whether it is desirable that any particular *tarwad* should be exempted from the operation of this provision. In other words, in the first instance the bill should be allowed to stand as it is, and then an enabling section should be put in to the effect that, notwithstanding the provisions of this regulation, any Ezhava *tarwad*—*misravazhi*, or *marumakkathayam tarwad*—which desires to be exempted from any particular provision, may be allowed to do so. After knowing the result of Mr. Parameswaran's amendment, if the House is so minded, I have no objection to put in an amendment enabling any section of the community to get out of the regulation.

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[Mr. M. Govindan.]

DEPUTY PRESIDENT: For the present, I suppose you oppose the amendment.

MR. V. SUBBA AIYAR: Yes.

MR. M. GOVINDAN: I also oppose the amendment. I should be very sorry indeed to impose the will even of the majority on the minority, provided that there is any reasonable way out of it or any practical suggestion for exempting the minority. This House has made some alterations in the law governing the Ezhavas as a whole. The main alterations that were made are in respect of complete devolution of the self-acquisition of the acquirer upon his wife and children (clause 15), full power of testamentary disposition (clause 20), and partibility of individual and *makkathayam* properties (chapter VII). These are the only material amendments made in the existing law. What Mr. Paramesvaran wants is to exempt the *misravazhi* section of the Ezhavas *as a class* from the operation of these provisions. Mr. Paramesvaran's amendment practically amounts to this, that he does not want the law as passed by the Council to apply to the *misravazhi* Ezhavas. He is only one of the three Ezhava members of this Council, all of whom happen to be of the *misravazhi* section. I ask first what right Mr. Paramesvaran has, what mandate, or rather, what better mandate he has from the *misravazhi* community to represent them than Mr. Kumaran, the General Secretary of the S. N. D. P. Yogam, not to speak of myself.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: May I know whether the mandators do not consist of those who have been congregating in the college compound during the last three or four days?

MR. M. GOVINDAN: I wish to point out to my friend Mr. Rangaswami Aiyangar, with all respect, that it is impossible to secure complete unanimity of opinion in the matter. He seems to be under the impression that absolute unanimity is necessary for any piece of social legislation. That is not the position which this House has been adopting in respect of other pieces of social legislation before, nor is it possible to secure such unanimity.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: That is not my question. I shall explain it. Mr. Govindan asked what mandate Mr. Paramesvaran has. I ask Mr. Govindan whether those gentlemen who are congregating in the college compound and whom I understand to be some of the people behind Mr. Paramesvaran, and persons like that, do not constitute the mandators.

DEPUTY PRESIDENT: They may not be all *misradayees*.

MR. M. GOVINDAN: I am speaking of the two lakhs of *misravazhi* Ezhavas. Among them there may be a few men who hold the same opinion as Mr. Paramesvaran. I do not say that Mr. Paramesvaran

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is not honest in his intentions or opinions or that he has no following at all. What I say is that he is grossly exaggerating the division of opinion in the community itself. He says in one place that 80 per cent. of the *misravazhi* Ezhavas are of his view and do not want this measure, while in another place he wants that the right of the minority should be respected, and admits in effect that his view is held only by a minority. I am not sure whether Mr. Paramesvaran can vouch for the authority of all the signatures in the memorial which, he says, has been submitted to this Council. I have to concede the fact that Mr. Paramesvaran is a very intelligent person who has got a very persuasive way with the members of his community and who is capable of getting a certain number of converts to any view he holds. I ask again whether his mandate, if any, is better than that of the Secretary of the S. N. D. P. Yogam. Mr. Paramesvaran calls himself the President of the *Misradayam* Committee. I ask who elected him as President and where that committee is. It is a committee which exists only in the air. It has no status. Not so the S. N. D. P. Yogam which is a regularly organised association registered under the Companies Act and having on its rolls a very large proportion of members following the *misradayam*.

DEPUTY PRESIDENT: For the position he has taken, Mr. Paramesvaran does not rest his claim on a representative status.

MR. M. GOVINDAN: He puts forward his claim to represent the views of the *misradayam* community on a representative capacity. So, I am examining his position. I shall proceed further.

MR. P. PARAMESVARAN: അങ്ങനെ പറയാൻ പാടില്ല. മിശ്രദായക്കമ്മിറ്റി എന്ന ഒരു കമ്മിറ്റി ഇല്ലെന്നു പറയുന്നത് യുക്തമാണെന്നു തോന്നുന്നില്ല. ഇപ്പോഴത്തെ ആ കമ്മിറ്റിയിൽ അനേകം ആളുകൾ ഉണ്ട്. അനേകം ആളുകൾ അംഗങ്ങളായി ചേർന്നിരിക്കുന്നു.

DEPUTY PRESIDENT: നിങ്ങളുടെ മറുപടിയിൽ ഇതൊക്കെ പറയാം.

MR. M. GOVINDAN: What I say is that it is not an organised institution like the S. N. D. P. Yogam which is a long-standing one in the community.

DEPUTY PRESIDENT: Mr. Kumaran is not here as the Secretary of the S. N. D. P. Yogam.

Mr. M. GOVINDAN: No. But, as he happens to be the Secretary, he may be deemed to reflect the opinion of the *misravazhi* community better.

DEPUTY PRESIDENT: The Council would not be justified in considering, for that matter, the question of the presidentship of the *Misradayam* Committee either.

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[Rao Bahadur K. V. Rangaswami Aiyangar.]

MR. M. GOVINDAN: I may say, however, that Mr. Parameswaran has no claim superior to that of other *misravazhi* members here to voice the opninion of that section of the community.

MR. P. PARAMESVARAN: എല്ലാതാലൂക്കുകളിലും ഞങ്ങളുടെ മെംബർമാർ ഉണ്ട്. മിശ്രദായക്കമ്മിറ്റിയുടെ മെംബറന്മാരായി ഏ താലൂക്കുകളിൽ ആളുകൾ ഉണ്ട്. ഞാൻ അതിലെ പ്രസിഡൻറാണ്. എന്നെ ഇവിടെ എടുത്തിരിക്കുന്നത് മിശ്രദായക്കമ്മിറ്റിയുടെ പ്രസിഡൻറായിട്ടാണ്.

DEPUTY PRESIDENT: ഇതൊക്കെ നിങ്ങളുടെ മറുപടിയിൽ പറയാമല്ലോ.

MR. M. GOVINDAN: That is perhaps the address given in the Government order nominating him. To proceed, Mr. Rangaswami Aiyangar says that, from what Mr. Subba Aiyar was telling us the other day in regard to the witnesses examined by the Ezhava Law Committee, he gathers that the majority of the *misravazhi* Ezhavas are not for the provisions of this bill and are only for *misradayam*. This is not correct. These are the figures given by Mr. Subba Aiyar. Of the 265 *misravazhi* witnesses who were examined by that committee, the majority, *viz.*, 140, were for the devolution of the whole acquisition to the acquirer's wife and children, and even in the minority who were for *misravazhi* there was no argument regarding the share to devolve in the *makkavazhi* line, 35 witnesses being for the devolution of more than one-half and the remaining 90 for one-half only. I do not say that these witnesses constitute the whole community. The only safe index available for determining the view of the community is the numerical strength of the witnesses examined who supported the respective positions.

DEPUTY PRESIDENT: I think the House has already passed clause 15. A general proposition is put forward by Mr. Parameswaran that the *misravazhi* section ought to be exempted. Whatever be the percentage of witnesses as regards the devolution of *makkathayam* properties and partition, it is not a matter of paramount importance in determining the question whether, as a matter of policy, his position is reasonable and ought to be accepted by this House. This is merely a suggestion from me.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: Is the number of witnesses no index whatsoever of the numerical strength of the community, as regards the opinion of the community?

DEPUTY PRESIDENT: Let him draw his own inference. Everybody is allowed to draw his own inference.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: Only, my submission is that a person who has maintained some position throughout cannot be allowed to shift that position.

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MR. M. GOVINDAN: I have been from the beginning for complete devolution and not for *misradayam*.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: My point was that Mr. Govindan's position, as regards the figures with reference to the witnesses examined, is that they do not indicate the numerical support from the community, as regards the evidence given.

MR. M GOVINDAN: I said that it *was the only safe index available*. I do not propose to dwell at any greater length on that point. Even Mr. Rangaswami Aiyangar who moved an amendment more or less in the nature of Mr. Paramesvaran's, but a little milder, has now stated before the House that he is not able to agree with Mr. Paramesvaran.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I wish to say a word on a point of personal explanation. My amendment was absolutely different in principle. It is not 'more or less' the same as Mr. Paramesvaran's.

MR. M. GOVINDAN: Oh, yes. Then the question before this House is whether this House has to give legislative sanction for recognising two distinct sections in the community and hinder the fusion and obstruct its growing solidarity, or whether this House will pave the way for the united growth and harmonious progress of the two sections of the community, *viz.*, the *misradayam* and *marumakkathayam* sections, the differences between whom are not considerable even now, intermarriages also being not rare. I submit that question admits of only one answer.

MR. P. PARAMESVARAN: മിശ്രവഴിക്കാർക്കും മരുമക്കത്തവഴിക്കാർക്കും തമ്മിൽ ഇപ്പോഴും വിവാഹമില്ല.

MR. M. GOVINDAN: I may say his own brother has married a *marumakkathayee* woman and Mr. Paramesvaran himself has given her partition of properties.

MR. P. PARAMESVARAN: ഈ വിവാഹം സമുദായം സമ്മതിച്ചിട്ടുള്ളതല്ല.

MR. M. GOVINDAN: With these observations, I object to the amendment brought forward by Mr. Paramesvaran.

MR. K. P. RAMAN PILLAI: I believe this House has no other option than to reject Mr. Paramesvaran's motion. I do not think it requires all these elaborate arguments. Personally, I am inclined to think that his motion is not in order. It is a conglomeration of a dozen or more motions that have already been submitted by him and rejected by this House seriatim.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: May I say, Sir, one word on a point of order? I ask whether, after the amendment has been placed before the House for discussion, it is open to a member to say that the amendment is not in order? I want a ruling from the Chair.

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[Mr. K. P. Raman Pillai.]

DEPUTY PRESIDENT: Mr. Raman Pillai was not in order in having said so.

MR. K. P. RAMAN PILLAI: I do not know whether a ruling has been obtained on this point.

DEPUTY PRESIDENT: You seem to have expressed whether Mr. Paramesvaran's motion was in order. You expressed positive doubt, if not a positive disapproval.

MR. K. P. RAMAN PILLAI: Was there a ruling from the Chair on this point?

DEPUTY PRESIDENT: Mr. Rangaswami Aiyangar's question is whether, after the proposition has been placed before the House for discussion by the Chair, it is open to you to say that the amendment was out of order. You were out of order if you questioned at this stage the competency of Mr. Paramesvaran to move the amendment.

MR. K. P. RAMAN PILLAI: I could not be out of order. I can speak on a point of order at any time. Now that the question has been raised, it is open to me to bring this matter to the notice of the President as a point of order, because the rule says that a point of order may be raised *at any time*, so that I may now specifically raise this question as a point of order.

DEPUTY PRESIDENT: Mr. Paramesvaran is in order.

MR. K. P. RAMAN PILLAI: Several motions regarding this matter having been rejected by the House in connection with various sections, I raise the question whether the member is in order to bring them in a conglomerated form now.

DEPUTY PRESIDENT: He is in order, Mr. Raman Pillai.

MR K. P. RAMAN PILLAI: Whether he is in order or not, I think the House will be making itself inconsistent and illogical by allowing this amendment to be discussed at any length. It requires only a summary rejection. No doubt, the question of minority and majority has been brought at convenient intervals, but when it came to the question of partition, *i. e.*, as to whether the Ezhava community should have *thavazhee* partition or individual partition, there was a difference of opinion between the two sections of the community. There were two parties advocating *thavazhee* partition or individual partition as the one more conducive to the progress and prosperity of the community, and in that matter, there was a respectable number of persons advocating individul partition. But in deciding that question, the consideration that weighed with this Council was the decision arrived at by the Ezhava Law Committee—a responsible body appointed by the Government—who after making an elaborate enquiry into the matter have recommended that what they consider to be good for the welfare of the community is the partition they suggest and not individual partition which the members desire to be incorporated into this bill. Now, we have to proceed upon some principle. Are we to proceed on the principle of majority and

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minority, or are we to accept the considered opinion of a responsible body like the Ezhava Law Committee and adopt that as the criterion for our decision? No doubt, there is the legislative canon or legal etiquette which, if the Committee have consciously or unconsciously contravened, it is open to this Council to rectify, so that we may not make ourselves inconsistent and illogical in the position we take up. I find no difficulty in opposing the amendment brought forward by Mr. Paramesvaran, on more grounds than one.

DEPUTY PRESIDENT : മിസ്റ്റർ. പരമേശ്വരൻ, നിങ്ങളുടെ മറുപടി.

MR. PARAMESVARAN: വേറെഅമെൻഡുമെൻറ് ഇപ്പോൾകൊണ്ടുവരാം. ഇതിൽ വിശ്വാസമില്ലാത്ത മിശ്രദായവഴിക്കാരും ഇപ്പോഴത്തെ നിയമത്തിൽ സംബന്ധിക്കാൻ മനസ്സില്ലാത്തവരും തന്നതാൻ ഒഴിഞ്ഞു പോകുക എന്നാണ ഞാൻ മനസ്സിലാക്കീട്ടുള്ളത്. ഇപ്പോഴത്തെ നിയമത്തിൽ സംബന്ധിക്കാൻ മനസ്സില്ലാത്തവർ ഒഴിഞ്ഞുപോകണം.

DEPUTY PRESIDENT : നിങ്ങളുടെ അമെൻഡുമെൻറ മനസ്സുള്ള മിശ്രദായക്കാർക്ക്, റെഗുലേഷൺ അനുസരിച്ച് സ്വാതന്ത്ര്യം ഇല്ലെന്നാണെല്ലോ. നിങ്ങളുടെനിശ്ചയം റെഗുലേഷൺ അനുസരിച്ച് നടക്കാൻ മനസ്സുള്ള മിശ്രദായക്കാരെ ക്രൂടിബാധിക്കുകയില്ലേ?

MR. P. PARAMESVARAN : ഇതിനാൽ ആക്കെങ്കിലും സ്വാതന്ത്ര്യമായിനടക്കാൻ പാടില്ലെങ്കിൽ അവർ ഒഴിഞ്ഞുപോകട്ടെ. വല്ലവാക്കൊ അത്ഥത്തിലോ തെറ്റുണ്ടെങ്കിൽ ഞാൻ വ്യക്തമാക്കിത്തരാം.

DEPUTY PRESIDENT : ആസ്ഥിതിയ്ക്ക് വേറെഅമെൻഡുമെൻറ് തരണം. ആ നിയമം അനുസരിച്ച് നടക്കാൻ മനസ്സില്ലാത്ത മിശ്രദായക്കാരെഒഴിക്കണമെന്നാണ് ഇപ്പോഴം ഉദ്ദേശിച്ചിരിയ്ക്കുന്നത്. നിങ്ങൾക്കു പറയാനുള്ളതിനെ ഞാൻ തെറ്റിദ്ധരിച്ചു എന്നുവരരുത്.

MR. A. HOOGEWERF : Sir, I rise to a point of order. This House is only concerned with the amendment before it. If he wants to change his position and put in a different amendment we will have to consider it before it is accepted.

DEPUTY PRESIDENT: If the amendment is to be voted upon it will be the amendment as it is now discussed.

മിസ്റ്റർ പരമേശ്വരൻ, ഇപ്പോൾ ഹാജരാക്കീട്ടുള്ള ഭേദഗതിയെ പറ്റി ഈ കൌൺസിലിൽ അനുകൂലമായിപറഞ്ഞവരും പ്രതികൂലമായിപറഞ്ഞവരും ഉണ്ട്. അതിനെ സംബന്ധിച്ച് നിങ്ങൾക്ക് വല്ലതും പറവാനുണ്ടെങ്കിൽ അതുപറയണം.

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[Mr. V. Subba Aiyar.]

MR. P. PARAMESVARAN: എല്ലാവരും ഏതുവിധം പറഞ്ഞു എന്നെനിക്കു മനസ്സിലായില്ല. അതുകൊണ്ട് എന്റെ അഭിപ്രായത്തെ ഞാൻ പറയുന്നു. എന്റെ അപേക്ഷ മിശ്രദായക്കാരെ ഒഴിച്ചു വിടണമെന്നാണ്. ഈ ബില്ലിൽ ആക്കെല്ലാം പക്ഷമുണ്ടോ അവരെല്ലാം ചേർന്നുകൊള്ളണം എന്നും അല്ലാത്തവർ പോകണമെന്നാണ് എന്റെ അഭിപ്രായം.

DEPUTY PRESIDENT: അതിന് അമെൻഡുമെൻറ് വേറെയാണ്. ഇപ്പോഴത്തെ അമെൻഡുമെൻറിനെപ്പറ്റി വല്ലതും കൂടുതൽ പറയാനുണ്ടെങ്കിൽ പറയണം.

MR. P. PARAMESVARAN: വേറെകൊണ്ടുവരണമെങ്കിൽ കൊണ്ടുവരാം.

DEPUTY PRESIDENT: വേറെ വല്ലതും ഇപ്പോഴത്തെ അമെൻഡുമെൻറിനെപ്പറ്റി പറയാനുണ്ടോ?

MR. P. PARAMESVARAN: ഇല്ല.. ഞാൻ പറഞ്ഞിട്ടുള്ള അർത്ഥത്തിൽ വേറെ ഉപക്ഷേപം കൊണ്ടുവരാം.

DEPUTY PRESIDENT: ഇപ്പോഴത്തെ അമെൻഡുമെൻറിനെ പിൻവലിയ്ക്കാൻ അപേക്ഷയുണ്ടോ?

MR. P. PARAMESVARAN: ഉണ്ട്.

DEPUTY PRESIDENT: എന്നാൽ പിൻവലിയ്ക്കുക.

MR. P. PARAMESVARAN: ഞാൻ വേറെ കൊണ്ടുവരാം.

DEPUTY PRESIDENT: അമെൻഡുമെൻറിനെ നിങ്ങൾ പിൻവലിക്കുന്നുണ്ടോ? അതിലേക്ക് യോഗത്തോട് അപേക്ഷയുണ്ടോ?

MR. P. PARAMESVARAN: ഞാൻ അതിനെ പിൻവലിയ്ക്കുന്നു.

DEPUTY PRESIDENT: Mr. Paramesvaran wants to withdraw his amendment. Does the House permit him to withdraw the amendment? I see nobody objecting to the withdrawal.

The amendment was, by leave, withdrawn.

MR. V. SUBBA AIYAR: Sir, when I objected to Mr. Paramesvaran's amendment, I said that I would propose an amendment enabling any *tarwad* to get itself exempted from the operation of some parts of the regulation. We know, as a matter of fact, that, in social legislation,

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it is not possible to get unanimity of opinion. At the same time, no legislation should be intended to affect a person who is unwilling to be bound by it. That principle is recognised, I believe, even by Mr. K. P. Raman Pillai in his proposed Nair Bill. I do not think he can object to this proposal on that ground. It has been accepted in the Cochin Nair Regulation, in the Christian Succession Regulation and in all the other regulations of the kind, so that, when the Committee recommended it and particularly when the Select Committee recommended it and when the House passed it, that means that, in the first place, it is intended to be applicable to all persons who are intended to be governed by it; but it is open to particular families to get themselves exempted. If, as my friend has been urging, any particular *tarwad* will be seriously injured owing to religious scruples if it is not exempted from the operations of the measure, by all means let such *tarwad* get itself exempted, whether it is a *marumakkathayam tarwad* or *misravazhi tarwad*. Even as regards the *marumakkathayam tarwads*, there may be one or two *tarwads* who may not like to come under the present measure. Any *tarwad* may get itself exempted if it is unwilling to subject itself to the provisions of the regulation. With that object in view I propose the following amendment—

MR. A. HOOGEWERF: Will it not result in the house being divided against itself?

MR. V. SUBBA AIYAR: No.

DEPUTY PRESIDENT: Let him move the amendment.

MR. V. SUBBA AIYAR: Then, I would move that the following be added as section 33:

"(1) On an application made within six months from the commencement of this regulation by the majority of the adult members of a *tarwad*, Government may, after making such enquiry as they deem necessary, and on being satisfied about the truth of the application, exempt by notification in the Gazette any such *tarwad* from the operation of all or any of the provisions of Parts IV and VII of this Regulation.

(2). On an application made by the majority of the adult members of an Ezhava *tarwad* exempted under clause (1), Government may, after making such enquiry as may be deemed necessary, and on being satisfied as to the truth of the application, revoke such exemption".

The object of sub-clause (2) is this. If a *tarwad* is exempted under the previous paragraph of the clause, the Government must have the power to revoke such exemption, because it may be that the majority of the members now existing in a *tarwad* object to the regulation being applied to them. Some time afterwards, say 10 or 20 years hence, the members may change their view. Then there must be power for the Government to revoke the exemption. Therefore, power is given to Government under this sub-clause. I believe that this provision must be satisfactory and must satisfy the legitimate requirements of Mr. Parameswaran's party. I handed over this amendment itself to Mr. Paramesvaran. He said he would be perfectly willing to move it because we do not thereby go against the wishes of the community. If there is any *tarwad* which wishes to get itself exempted, it may apply for it.

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[Mr. P. K. Narayana Pillai.]

MR. P. K. NARAYANA PILLAI: May I know whether this Council is not going against the wishes of those persons who advocated individual partition?

MR. V. SUBBA AIYAR: In the matter of individual partition, it is not this Council that is going against the wishes of its advocates. What the Council is prepared to pass is what becomes law, and from that law any person may be exempted. There are ever so many cases of the kind. You should not force a law upon a particular community. So out of deference to the wishes of the minority section—the *misravazhi* section—I put it in a general way. Even supposing there are some *tarwads* outside the *misravazhi tarwads*, they may get themselves exempted. I say any Ezhava *tarwad* may get itself exempted from the operation of these provisions of the bill. It is such an enabling provision that has been made. I think that it is a desirable provision and that it would be accepted by the House.

MR. N. PADMANABHA PILLAI: I second the motion.

MR. K. P. RAMAN PILLAI: I oppose the amendment. The provision may be good in itself, but, unfortunately, we are again going against the principle that the majority ought not to tyrannise over the will of the minority. The exemption sought for is to be given to any *tarwad* which may apply for it. For example, in a single *tarwad*, the majority may be for exemption, but there may still be a minority who are not for exemption; so that, there again, the majority shall be tyrannising over the wishes of the minority. For example, my friend Mr. Kumaran who belongs to a *misravazhi tarwad* is for having all the provisions of the present bill applied to him, but if the majority of the adult members of his *tarwad* were to apply for exemption, what would his position be? (*Laughter.*) That will be a hard case. That will apply to Mr Govindan also, who, after all his trouble and his work in the Council, will have to go without the benefit of the provisions of this bill, if the majority of the members of his *tarwad* take a perverse view and apply for exemption. I think there should be a proviso, such as this: "Or that any individual may on application be exempted". It will then be easier. To get the opinion of the majority of the *tarwad* and to apply will be more difficult than an individual applying to Government. Of course, the object of the exemption clause is to make it as difficult as possible. That ought to be the understanding. Such being the case, I think that the proviso ought to be suitably amended so that individual cases of hardship may be guarded against.

MR. P. K. NARAYANA PILLAI: I perfectly agree with Mr. Raman Pillai in the position taken up by him and I would further point out that the question of majority and minority with reference to a matter of this description is a very dangerous one. For, in many *tarwads*, there may be only a few members holding any self-acquisitions. It is with respect to such self-acquisitions that trouble is attempted to be created. Supposing that the majority of the members in a *tarwad* who do not hold anything as their own, conspire to thwart a member who has got some self-acquisition, what will be his condition?

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MR. T. K. VELU PILLAI: May I know whether a man who has made self-acquisitions has not got the right to will it?

DEPUTY PRESIDENT: That power he certainly has.

MR. P. K. NARAYANA PILLAI: He has certainly got that power, but contingencies will occur precluding testamentary disposition. We should discountenance the means of an impecunious majority tyrannising over a moneyed minority.

MR. M. GOVINDAN: I also oppose the amendment. I oppose it for the reason that there are insuperable difficulties in the working of the provision suggested by Mr. Subba Aiyar. In the first place, as to the members of a *tarwad*, as every *marumakkathayam* lawyer knows, the *tarwad* is a unit with a very smoky margin and it is not easy to draw a line of demarcation. The members of a *tarwad* should mean, members who have community of interest in the *tarwad*. Whether A, B and C who are applicants for the exemption of a *tarwad* are members who have community of interest is a complicated question which the Government will have to decide. Now I ask which officer of Government it is that is going to decide it. Is it the Head of the Administration? It is obvious that it may not be possible for him to devote sufficient attention to this question in every case that may arise. Then it will go perhaps to the next officer, or perhaps even lower down; and it may after all be the Proverthicar that is going to determine whether a particular individual is a member of a *tarwad* or not. I say that this will be a great hardship indeed to the community. Any man who wants to establish membership in a *tarwad* can get it done very easily by putting in an application before such an officer and getting a verdict in his favour. The majority of signatories in an application may be persons of doubtful status. I can tell the House that in respect of my own *tarwad* which numbers nearly a thousand people in varying degrees of community of interest—admitted community of interest, doubtful community of interest, no such interest at all and so forth—it would be very difficult to arrive at a proper decision. The question is before which forum the application for exemption is to be made. If it is the revenue officer, is he competent either by training or experience to decide this question in a satisfactory manner? Can we get a proper decision from him on this question? It will be very difficult and impracticable to arrive at a decision as to whether the majority of members of a *tarwad* have joined in an application. Besides, suppose a *karanavan* like Mr. Paramesvaran wants to get exemption for his *tarwad*. I know as a fact that the majority of junior members are not in favour of exemption, in his case. There are many ways in which the *karanavan* can get junior members to consent to the exemption. The *karanavan* has large powers. We have not restricted them. Whenever there was a proposal for restriction I was always on the side of the *karanavan*. Now if you put in an exemption clause, it would mean that a *karanavan* who wishes to get exemption for his *tarwad*, will have opportunities and will not lack the inclination to tyrannise over the junior members. That the management of *tarwads* is already far from satisfactory is conceded. So, to sow the seed for further schism and to afford further opportunities to

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[Rao Bahadur K. V. Rangaswami Aiyangar.]

the *karanavan* to oppress the junior members will be a very great hardship. I therefore strongly oppose the amendment.

MR. K. C. RAJA RAJA VARMA: I am in favour of the provision proposed by Mr. Subba Aiyar. This is merely an enabling provision whereby the members of a particular *tarwad* who wish to continue jointly can have their wishes complied with. All the difficulties pointed out by Mr. Govindan are more or less hypothetical in their nature. All those circumstances which he mentioned will only be against Mr. Govindan's position. Whenever there is the least doubt or objection with regard to the registration of a family under the proposed clause, the revenue officer will be inclined more to refuse exemption than to grant it. In cases where any difficulty or any disagreement arises between the members as to which party constitutes the majority, the result will be that exemption will not be granted in such cases by the revenue officers. To my mind, those cases also seem rather illusory. This being a piece of social legislation, it seems to me that it is the duty of the legislature to provide a clause whereby those members of the community who may not like it should be enabled to get out of it if they want to do so. On these grounds, I support the amendment.

MR. A. HOOGEWERF: After hearing Messrs. P. K. Narayana Pillai, K. P. Raman Pillai and Govindan, I cannot see my way to support Mr. Subba Aiyar's compromise amendment which will lead the state of affairs in a *marumakkathayam tarwad* to a worse position than now. I therefore oppose the amendment.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: Sir, I wish to support Mr. Subba Aiyar's amendment, and I trust that, despite the vigorous and humorous speeches we have heard against it during the last two minutes, the House will proceed to accept the amendment. In this very difficult question, it seems to me that the members of the Council are not likely to get anything which may be regarded as absolutely impartial leading. One of the things that has bewildered me in the course of the discussion on the Ezhava Bill has been the manner in which the members of that community have been adducing arguments based on general principles, first on one side, and then on the other. I would suggest that in this question we had better arrive at a proper conclusion, such a conclusion as might appeal to our reason and to our conscience, irrespective of what this or that representative of the community puts forward on behalf of the majority or the minority of his community. If you take the opinion of each of the members who has spoken for the community, it will be seen that he alone represents the community and no one else. It is not open to this Council to go and investigate the accuracy of these claims. I have already said that it is not necessary for us to go into the question of the honesty and the validity of the statements because the question of the numerical superiority behind the one or the other of the advocates is absolutely irrelevant to the decision that we have to arrive at. It is admitted that there are a certain number of persons who have been following a traditional practice and who are manifestly unwilling to be brought under the provisions of this law. Are

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we to deny them the relief they ask for, in being permitted, even under certain conditions of inconvenience, to follow their old system of law? We are told that their number is a negligible number—is such a microscopic minority that it need not be considered at all, and that their case is so hopeless that we may regard them as persons who must, and who will, reconcile themselves to the change if only we are firm and the change is sanctioned by the legislature. May I ask those who advocate the present bill without any exemption clause, since they are so confident of the easy convertibility of the negligible minority, why they should not grant them the exemption, since on their showing no one is likely to use the exemption?

MR A. HOOGEWERF: There are many who want individual partition. Why did not this House allow individual partition to them?

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I am not answerable for the decisions of the House. Does Mr. Hoogewerf suggest that I gave up individual partition? In regard to such matters, I am not in a better position than he to know why the House did not allow it.

DEPUTY PRESIDENT: Yes, you may proceed.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: In this question, we have had certain arguments on one side or the other. What this House has to consider is how it may arrive at some solution which might minimise the practical difficulties and disabilities of the *misravazhi* Ezhavas, who still want to follow the old order, and such other Ezhavas who, though not *misravazhee* Ezhavas, want to follow the old order. I am glad that Mr Subba Aiyar's amendment would make it possible.

MR. A. HOOGEWERF: Do not the individual partitionists travel in the same boat?

DEPUTY PRESIDENT: That question does not arise. To me your reference to it is irrelevant.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I should like to appeal to the Chair and ask that my right as a member of this House to be allowed to speak be conceded to me. If I am to be interrupted in the middle of my remarks and inconvenienced in stating my case by those who hold other views, I have a right to appeal to common fair play and ask whether questions should be put to me, so as to block my speech, as if I were a hostile witness and not a member?

DEPUTY PRESIDENT: I think Mr. Hoogewerf was addressing the question to you through the Chair.

MR. A. HOOGEWERF: Mr. Rangaswami Aiyangar said that respect should be given to the opinion of the minority—

DEPUTY PRESIDENT: You have no right to make a speech at this stage. You can only offer a personal explanation.

MR. A. HOOGEWERF: Mr. Rangaswami Aiyangar said that, if the minority want to follow the old order of things, we must respect

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[Mr. Joseph Panjikaran.]

their wishes. Similarly, there are a number of people who want individual partition. Why did we not repect their wishes?

DEPUTY PRESIDENT: Is this a personal explanation?

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I appeal to you, Sir, to see that, as far as possible, I am not interrupted unnecessarily. In regard to the remarks I have to make, I wish the House to remember that the question bristles with great difficulty. We have all seen some of this difficulty. This bill has already taken a considerably larger portion of the time of this House than was originally anticipated and the time given for the consideration of this measure shows the extraordinary difficulty we have in passing this bill. Mr. P. K. Narayana Pillai and Mr K. P. Raman Pillai made a reference to a point of logic and said that we would not be consistent and logical if we passed this amendment. Are we not occasionally bound to consider whether, even at the sacrifice of logic, a position of compromise might not be necessary for the purpose of making existence a little more tolerable to some of our fellow-subjects, whom we all collectively represent?

MR. JOSEPH PANJIKARAN: Can a principle be sacrificed for the sake of expediency and compromise?

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: It depends absolutely upon what you call 'principle'. There are certain fundamental principles which a person is not entitled to sacrifice in any circumstances. At the same time, occasionally we may forgo even certain minor canons for reasons of expediency, if we find that it is desirable to do so.

MR. JOSEPH PANJIKARAN: May I know whether, in a matter of legislation, the dictum that the majority should not enforce their will upon the minority is a fundamental rule of legislation, or a matter of expediency?

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I wish to tell the House that Mr. Panjikaran's question is somewhat in the nature of a misjoinder. I have not said at any time that in any legislation there is no such thing as the coercion of a minority by the majority. For instance, we are passing several penal laws. There, we are undoubtedly coercing the minority who do not want it.

MR. JOSEPH PANJIKARAN: Just a word of personal explanation. I was speaking only of social legislation and not of penal legislation.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: Whatever may have been intended, Mr. Panjikaran said "legislation" and I gave my answer.

MR. JOSEPH PANJIKARAN: I restrict it to social legislation. Will you please answer the question?

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DEPUTY PRESIDENT: The interest of the discussion has certainly not been increased by your asking him to deliver a course of lectures on social legislation.

MR. JOSEPH PANJIKARAN: I am not asking him to deliver a course of lectures on social legislation. I only ask him whether, in the matter of social legislation, the dictum that the minority should not be forced by the majority is a fundamental matter of principle. That would not involve a course of lectures.

DEPUTY PRESIDENT: Do I understand you to ask whether, in a matter of social legislation, it is open to the majority to legislate against the wishes of the minority?

MR. JOSEPH PANJIKARAN: Whether that rule which was enunciated by Mr. Rangaswami Aiyangar is a matter of principle, of fundamentality, or only one of expediency, which could be brushed aside.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I may say that, if Mr. Panjikaran had simply turned his recollection to what I said—what I said with a certain amount of emphasis—as to my position, there was no necessity for him to ask the question. So far as I am concerned I may assure the House that I cannot have a principle changed at will. It is not one of those things in which there is necessity for a man to change the principle to suit expediency. The members of this House will be in a position to know what my position in regard to the motion before the House is, from what I have already said. If Mr. Panjikaran wants a course of lectures, I do not propose to accept the invitation and to inflict upon the House any.

MR. JOSEPH PANJIKARAN: I rise to a point of explanation. I do not want any lecture. I only wanted an answer to my question.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I do not propose to repeat what I have already said.

DEPUTY PRESIDENT: You are not bound to. You may proceed.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I merely wish to point out that, in regard to this important matter in which there are so many practical difficulties, we have to recognise that, in the position of the communities as we now find them, there is a certain amount of irreconcilableness between pure individualism and the modified communal life which is possible even under the altered *tarwad* system. If we had an absolutely individualistic system, then it would be quite easy for us to exempt individuals who want entirely to be exempted. Personally, as far as I am concerned, I would prefer absolute individualism and absolute individual exemption. But, if I cannot get absolute individual exemption for every individual who wants to get exemption, I am not, on that ground, going to lose the opportunity of getting something which might be a stepping-stone for getting absolute individual exemption later on. I am prepared, even at the risk of putting the members of a *tarwad* to some difficulty,

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[RAO BAHADUR K. V. Rangaswami Alyangar.]

to allow the *tarwads* which want to place themselves outside the scope of this law to ask for exemption. On a previous occasion, I pointed out that, in view of the *misravazhi* community being the community which wants to adhere to the law that is now enforced in the courts, anybody who favours the reform must bear the burden of going before a Magistrate or a Peishkar, and not any person who wants the existing order of things. But, even on that point, I am willing to recognise that it may not be practicable now to ask this to be done. Considering how coming events cast their shadows before, and how the discussion on this subject has been affected by a fore-cast of the discussion of questions concerning other communities of an analagous character, I have felt that the only thing that might be practicable for the *misravazhi* community is to get exemption, even at some trouble. On the last occasion, Mr. Paramesvaran refused to accept a compromise of this nature which I suggested to the House, and the House also rejected that compromise. Something similar is now being put before the House. It is now put forward, on some other ground, namely, that it is desirable that certain members of the Ezhava community be allowed to preserve the usages hitherto conceded to them by the law of the country, which they would lose at once if this bill becomes law. I recognise that, in asking for *family* exemption, I might seem to overlook that practical difficulties of some nature are likely to crop up now and then. I shall not go so far as Mr. Govindan and say that these difficulties will crop up every day. I admit merely they are not unlikely. So far as I have been able to enquire into the matter from persons on both sides, and from those who do not belong to the community but administer the law, I do not think there is any warrant for assuming that the difficulty is insuperable. There may be some inconvenience. Mr. Paramesvaran told me the other day that it would be difficult to take the women-folk before the Peishkar. But, the ladies of the community are not *gosha*, and I presume that now, when there is any transfer of property and it has got to be registered, a considerable number of them go to the office of the Sub-Registrar. There happens to be a Sub-Registry office near my house, and I see a considerable number of ladies and gentlemen—many of them Ezhavas—congregating there. I do not think there is any *real* difficulty here. If business takes them before a court once or twice in their life-time, women do go. Further, it is for the officer concerned who has to register the exemption to decide how he is going to be satisfied. He may dispense with the personal attendance of the ladies. Mr. Govindan remarked that this power might devolve upon the smallest official. I am not sufficiently conversant with the devolution of authority from one officer to another in the State to know if what he states fits in with the actualities. But I presume that, in all such cases, where an officer has a right to pass a final order he is a person of standing and he does so after an enquiry to satisfy himself and his conscience as far as possible. As regards the decision to be arrived at, I am not prepared to go so far as to say that

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officers to whom certain functions have been assigned will not discharge their duties aright. I think that Mr. Govindan is over-stressing a mere possibility for a purely debating purpose, to make out that very serious difficulties will arise by officers recklessly taking information from ill-paid and irresponsible subordinates, when as a matter of fact such things will not happen. That argument, I feel sure, will not appeal to this House, in which the bulk of the members know a great deal more in regard to the practical administration of such matters than I can profess to do, and at least as much as Mr. Govindan. All that I wish to point out on this occasion is that there is real difficulty to a large number of persons—a fairly large section of His Highness's subjects—if this law is passed unamended. We have to see how, even at this stage, we may give them the option to escape from these difficulties. If, as Mr. Govindan has been arguing, these people are not likely to benefit from or may not care to have the advantage of any exemption, the position is simple. It is up to them to decide which is more serious and inconvenient—to go on with the old law and undergo the difficulty or mortification, whatever it may be, of going to the Dewan Peishkar and get themselves exempted, or to accept the changes outlined in the bill.

One other thing that has been pointed out is that there will be coercion in any case, whether you exempt or not. My conception of it is like this. The minority to-day may be the majority to-morrow. Mr. Govindan refers to 'the smoky fringes' of the *tarwad*. May I, on my side, point to the fluid character of the *tarwad*, and to the fact that individuals as well as *tarwads* change? We assume that there will be continuity of progress in these matters. I see that there has been considerable and important change of opinion in this community. If we assume that, even among those who want to exempt themselves from the provisions of this bill, there may be changes of opinion, there must be a way to escape from coercion. Again, some of those who want exemption now may not want it afterwards. We have been told that there may be in a *tarwad* a progressive minority, while the *karanavan* is an unprogressive tyrant, and so on. I have come across many Ezhavas who are not directly represented here, and have spoken to them. The intensity with which they spoke of the difficulty showed me the feeling of mortification and fear which would be raised if this law is passed for the entire community. Considering these circumstances, I think that Mr. Subba Aiyar has done a service even at this stage by giving the House an opportunity to consider this matter again and of allowing any community, which wishes to do so, to withdraw itself from the provisions of this law. In regard to those who have come forward to plead that the opinion of the majority prevail over the minority, I would ask them whether there is not a pathetic human touch in the complaint that, after all, the persons directly concerned in the decision of this measure are the members of the Ezhava community who visualise difficulties which we may not—who may not have the advantage of our visions of progress, our anticipations of progress, and our faith in the virtue of undergoing present difficulties in the hope of prospective

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[Mr M. R. Madhava Variar.]

advancement. Cannot we make allowances for them? Mr. Govindan said that the solidarity of the community should be maintained. It can be maintained in one of the two ways. It is certainly attempted to be maintained in both ways. One is by compulsion and the other by tolerance. In many cases, so far I know, where compulsion has been applied and has been successful, it has been successful only for the moment. In the long run, the lasting basis of solidarity comes only from such tolerance, by one section of the community, of the usages of other sections, as enables them to go on living together in peace, good-will and harmony. It is for this reason that, on an earlier occasion, I made an appeal myself, in the interests of the solidarity of the community, in the name of harmony between the members of the Ezhava community in all its sections, and the various other communities of which representatives are to be found in this House. I then said what I repeat now most solemnly, that it is desirable that what we do on this occasion should not smack of overlooking the legitimate complaints of any section of His Highness' subjects. It is on these grounds that I pleaded on the last occasion for tolerance. My object and Mr. Govindan's are identical. He seeks to achieve it by attempting to over-ride difficulties. I think differently. I would conciliate all sections by granting all reasonable freedom of conscience. So far as I have been able to see, grave difficulties will not rise from being tolerant; and even if difficulties arise, they will be met if we endeavour to prevent any heart-burning to any of our fellow-subjects. This is why I was willing to accept a practicable compromise. In the present state of the society, we are passing from a communal stage to gradual emancipation to individualism. In such a state, if you will have nothing of compromise, there will be no possibility of movement at all; and consistently with the principle of liberty, the minority will have the right to stop all the progress of the majority. It is to avoid such deadlocks that I suggest a practical compromise which, though it may cause some inconvenience, would not cause that degree of hardship which a total denial of its time-honoured usages will cause to the *misravazhi* community when it is deprived of them, and that I ask the House's approval to the suggestion.

MR. M. R. MADHAVA VARIAR: I support Mr. Subba Aiyar. I think—

MR. K. PARAMESVARAN PILLAI: Sir, it is 5 P. M. now. Are we to continue the further discussion to-day?

DEPUTY PRESIDENT: Mr. Madhava Variar has risen to speak. It will not be fair to stop now. We shall adjourn as soon as he finishes his speech.

MR. M. R. MADHAVA VARIAR: I think that the amendment is intended for the protection of the majority. This House has all along been recognising the sanctity of the majority. Even in this Council and outside, the opinion of the majority prevails. The minority will have to submit to the will of the majority. What I say is that by this provision

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we are protecting the majority of the members of a particular *tarwad* against the minority. If the majority of the major members of a *tarwad* want *misravazhi* or individual partition or want to remain impartible, this Council ought to respect the opinion of that majority. I myself have sent up certain amendments which are tabled for discussion. If the majority of the members of a *tarwad* want individual partition, then that *tarwad*—

DEPUTY PRESIDENT: That question does not arise.

MR. M. R. MADHAVA VARIAR: I am simply arguing the principle. I am not moving that amendment. If the majority of the members of a *tarwad* apply to have the family registered, then it must be registered as an individually partible *tarwad*. Similarly, if the majority of the members of a *tarwad* apply to Government for registration saying that the family should be declared *misravazhi*, then it must be so declared. My friend Mr. Govindan raised the objection that it would be difficult for Government to make an enquiry in this matter. What the Government will have to do is simply to ascertain whether an application received from a *tarwad* is signed by the majority of the major members. If the Government are convinced that the petition is so signed, then the *tarwad* may be registered as a *misravazhi* or an individually partible or an impartible *tarwad*.

MR. K. PARAMESVARAN PILLAI: May I know whether the Government should not be satisfied that all the signatories belong to the same *tarwad*?

DEPUTY PRESIDENT: The amendment proceeds on that assumption.

MR. K. C. MAMMEN MAPPILLAI: Sir,—

DEPUTY PRESIDENT: There are others also who want to speak on this amendment. I think it will be more satisfactory if we adjourn the discussion to to-morrow.

I have to inform the non-official members of the Council that the election of members to the P. W. D. Workshops Committee will take place to-morrow after the close of the regular legislative business.

The Council adjourned at 5-10 P. M.

[S. PARAMESVARA AIYAR,

Secretary to the Legislative Council.

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